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Short title and commencement.

Repeal of Gui X of 1960.





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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT NEW CAPITAL (PERIPHERY) CONTROL (REPEAL) BILL, 2003.

GUJARAT BHLL NO. 1 OF 2003.

A BILL

to repeal the Gujarat New Capital (Periphery) Control Act, 1960.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:—

- 1. (1) This Act may be called the Gujarat New Capital (Periphery) Control (Repeal) Act, 2003
 - (2) It shall be deemed to have come into force on the 1st July, 2002.

Guj. X of 1960. 2. The Gujarat New Capital (Periphery) Control Act, 1960 is hereby

Guj. Ord. 1 of 2003. 3. The Gujarat New Capital (Periphery) Control (Repeal) Ordinance, 2003 Repeal is hereby repealed.

1-1

V Ex.-1-1

STATEMENT OF OBJECTS AND REASONS

The Gujarat New Capital (Periphery) Control Act, 1960 was enacted for controlling and regulating development in the periphery of the site of the permanent capital of the State of Gujarat. It also extends to the area adjacent to and within a distance of five miles on all sides from the outer boundary of the new capital of the State. The said Act provides for obtaining previous permission of the Collector for erecting any building or to make or extend any excavation or lay out any means of access to a road in the controlled area. It also provides for obtaining the permission of the State Government for the change of use of land. In the year 1976, the Gujarat Town Planning and Urban Development Act, 1976 was enacted for execution of development plans and town planning schemes in the whole of the State. In the year 1996, the Gandhinagar Urban Development Authority has been constituted under section 22 of the Act of 1976. Since the Gandhinagar Urban Development Authority is looking after the development in the areas covered under the Act of 1960, it is not necessary now to have two authorities for the same purpose in the areas of the capital and adjacent areas thereto. With a view to remove the hardship of the people in approaching two different authorities for the same purpose, it was considered necessary to repeal the Gujarat New Capital (Periphery) Control Act, 1960.

As the Gujarat Legislative Assembly was not in session at that time, the Gujarat New Capital (Periphery) Control (Repeal) Ordinance, 2002, was promulgated on 1st July, 2002 to achieve the aforesaid object. The said Ordinance was laid before the Gujarat Legislative Assembly in its session which was summoned to meet on the 27th December, 2002 and prorogued on the same day. The Bill converting the said Ordinance into an Act was published as Gujarat Bill No. 24 of 2002, but could not be taken up for want of time.

By virtue of sub-clause (a) of clause (2) of article 213 of the Constitution of India, the said Ordinance would cease to operate after the 6th February, 2003, the date on which the period of six weeks from the date of reassembly of the Gujarat Legislative Assembly expires. It was expendient to take immediate action to continue the operation of the provisions of the said Ordinance. Therefore, as the Gujarat Legislative Assembly was not in session, the Gujarat New Capital (Periphery) Control (Repeal) Ordinance, 2003 was promulgated as Guj. Ord. No. 1 of 2003, to achieve the aforesaid object.

This Bill seeks to replace the said Ordinance by an Act of the State Legislature.

Dated the 21st February, 2003

INDRAVIJAYSINH JADEJA.

Gandhinagr,

By order and in the name of the Governor of Gujarat,

Dated the 21st February, 2003.

V. M. KOTHARE,

Secretary to the Government of Gujarat. Legislative and Parliamentary Affairs Department.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE NORTH GUJARAT UNIVERSITY (AMENDMENT)

BILL, 2003.

GUJARAT BILL NO. 2 OF 2003.

BILL

further to amend the North Gujarat University Act, 1986.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

- This Act may be called the North Gujarat University (Amendment) Act, 2003.
- Short title and commencement

It shall come into force at once. (2)

Guj. 22 of 1986.

In the North Gujarat University Act, 1986 (hereinafter referred to as "the principal Act"), in the long title, for the words "the North Gujarat University", the words "the Hemchandracharya North Gujarat University." shall be substituted.

Amendment of long title.

Amendment of section 1 of Guj. 22 of 1986.

3. In the principal Act, in section 1, in sub-section (1), for the words and figures "the North Gujarat University Act, 1986", the words and figures "the Hemchandracharya North Gujarat University Act, 1986." shall be substituted.

Amendment of section 2 of Guj. 22 of 1986.

4. In the principal Act, in section 2, in clause (16), for the words "the North Gujarat University Act", the words "the Hemchandracharya North Gujarat University Act" shall be substituted.

Amendment of section 3 of Guj. 22 of 1986.

5. In the principal Act, in section 3, in sub-section (1), for the words "The North Gujarat University", the words "The Hemchandracharya North Gujarat University" shall be substituted.

Insertion of new section 79A in Guj. 22 of 1986.

6. In the principal Act, after section 79, the following new section shall be inserted, namely:-

Construction of references to North Gujarat University Act, 1986 and North Gujarat University in existing laws, instruments, etc.

"79A. (1) As from the commencement of the North Gujarat University (Amendment) Act, 2003 (hereinafter referred to as "the said Act"), any reference in any existing law or instrument or document—

Guj. of 2003.

S.

- (a) to the expression "the North Gujarat University Act, 1986" shall be construed as if it were a reference to "the Hemchandracharya North Gujarat University Act, 1986" and
- (b) to the expression "the North Gujarat University" shall be construed as if it were a reference to "the Hemchandracharya North Gujarat University".
- (2). Any act done by, or any suit or other proceeding filed by or against the North Gujarat University before the commencement of the said Act shall be deemed to have been done or, as the case may be, filed by or against the Hemchandracharya North Gujarat University.

Explanation.- For the purpose of this section "existing law" means any enactment of a Legislature of any other competent authority in relation to matters specified in Lists II and III in the Seventh Schedule to the Constitution of India as in force in any part of the State of Gujarat immediately before the commencement of the said Act and includes any statute, ordinance, rule, bye-law, regulation, order, notification, scheme, form or other instrument having the force of law made, prescribed or issued under any such enactment."

STATEMENT OF OBJECTS AND REASONS

Looking to the priceless contribution and luminous works in the field of Sanskrit, *Prakrit, Apbhransh* and *Deshyabhasha*, grammar, *kosh* (lexicon), *Alankar Shastra, Chhand Shastra, Kavya – Mimansa*, history, philosophy, Yoga and particularly authoring of "Siddhahem Shabdanushasan" by Shri Hemchandracharya, he came to be known as Kalikal Sarvagna Shri and was considered as a torch-bearer and pioneer of the cultural glory (asmita) of Gujarat.

To pay tribute for the tremendous religious, literary and academic contribution of Kalikal Hemchandracharya, the Executive Council of the North Gujarat University has considered it worthwhile to re-name "the North Gujarat University" as "the Hemchandracharya North Gujarat University". A resolution has been passed by the Executive Council to that effect. Accordingly, it is considered necessary to amend the long title, short title and other sections of the North Gujarat University Act, 1986.

This Bill seeks to achieve the aforesaid object.

Dated the 21st February, 2003

ANANDIBEN PATEL.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Gandhinagar,
Dated the 21st February, 2003

- 7-6-1

Secretary to the Government of Gujarat. Legislative and Parliamentary Affairs Department.

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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE BOMBAY PRIMARY EDUCATION (GUJARAT AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 3 OF 2003.

A BILL

further to amend the Bombay Primary Education Act, 1947.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

(1) This Act may be called the Bombay Primary Education (Gujarat Amendment)
Act, 2003.

Short title and

- (2) It shall be deemed to have come into force on the 11th June, 1998.
- 2. In the Bombay Primary Education Act, 1947 (hereinafter referred to as "the principal Act"), in section 2,—

Amendmens of section 2 Bom. LXI 6.2

- (i) after clause (5), the following clause shall be inserted, namely:—
- "(5A) "Authorised Officer" means such officer as the State Government may, by order appoint;";

V Ex.-3-1

Bom. LXI OF

1947.

- (ii) after clause (19), the following clauses shall be added, namely:-
- "(20). "Teacher" means primary school teacher;
- (21) "Vidyasahayak" means a person appointed on contract to assist a teacher and pupils (students) in a primary school under the supervision and control of the head-teacher.".

Amendment of section 13 of BomLXI of 1947.

- 3. In the principal Act, in section 13, in sub-section (2), after clause (d), the following clause shall be inserted, namely:--
 - "(dd) to maintain such number of Vidyasahayaks as may, in the opinion of the State Government or an authorised officer, as the case may be, be necessary;".

Amendment of section 17 of Bom. LXI of 1947.

- 4. In the principal Act, in section 17, in sub-section (1), after clause (c), the following clause shall be inserted, namely:—
 - "(cc) to maintain such number of Vidyasahayaks as may, in the opinion of the State Government, be necessary;".

Amendment of section 20 of Bom. LXI of 1947.

- 5. In the principal Act, in section 20,-
- (1) after sub-section (1), the following sub-section shall be inserted, namely:—
 "(1A) Every district school board, and every authorised municipality and recognised private primary school shall, with the approval of the State Government or of an authorised officer, maintain such number of Vidyasahayaks as may, in the opinion of the State Government or an authorised officer, as the case may be, be necessary."
- (2) after sub-section (4), the following new sub-sections shall be added, namely:— "(5) The State Government may constitute State Level Committee, namely Vidyasahayak Committee to exercise such powers and perform such functions as may be prescribed.
 - (6) The State Government may constitute Village Education Committee and Village School Construction Committee to exercise such powers and perform such functions as may be prescribed."
- 6. In the principal Act, after section 23, the following new section shall be inserted, narraely:

Insertion of new section 23A in Bom. LXI of 1947. Selection of Vidya 3ahayaks.

- "(23A) (1) For selection of Vidyasahayaks there shall be a Selection Committee-
 - (a) for every district, consisting of such persons as may be prescribed;
 - (b) for the area of every authorised municipality, consisting of such persons as may be prescribed;
 - (c) for recognised private primary schools consisting of such persons as may be prescribed:
- (2) The qualifications for appointment of Vidyasahayak shall be such as may be prescribed.
- (3) The Selection Committee shall select candidates for appointment as *Vidyasahayak* on such criteria and in such manner, as may be prescribed.
- (4) A District Primary Education Officer or an Administrative Officer of the Municipal School Board or the managing trustee in private primary grant-in-aid school with the approval of the District Primary Education Officer, as the case may be, may make appointments of the candidates in accordance with the directions given by the Selection Committee and subject to such terms and conditions as laid down in Vidyasahayak Scheme as may be prescribed.

Amendment of section 63

of Bom. LXI

of 1947.

- (5) No person shall be appointed as Vidyasahayak unless he has entered into a contract with the District Primary Education Officer or the Administrative Officer of the Municipal School Board or the management in case of recognised grant-in-aid private primary school with the approval of the District Primary Education Officer/District Education Officer, as the case may be, in such form and subject to such terms and conditions, as may be prescribed.
 - (6) The duties of Vidyasahayak shall be such as may be prescribed.
- (7) The provisions of this section shall have effect, notwithstanding anything to the contrary contained in sections 20 and 23 of this Act and in any provision of the Gujarat Panchayats Act, 1993.
- 7. In the principal Act, in section 63, -

(1) in sub-section (2), after clause (fa), the following clauses shall be inserted, namely:—

"(fb) the powers and functions to be performed by the State Level Committee, namely Vidyasahayak Committee;

- (fc) the powers and functions to be performed by the Village Education Committee and Village School Construction Committee;
- (fd) the persons of which Selection Committees shall consist of;
- (fe) the qualifications for appointment as Vidyasahayak;
- (ff) the manner and criteria for selection of candidates for appointment as Vidyasahayak;
- (fg) making of Vidyasahayak Scheme from time to time;
- (fh) the form of contract of appointment to be entered into by a *Vidyasahayak* and terms and conditions of such appointment to be contained in such contract;
- (fi) the duties of Vidyasahayak;".
- (2) to sub-section (3), the following proviso shall be added, namely:-

"Provided that if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with previous publication of any rules to be made under this section.".

Guj. 18 of 1993.

3-4

STATEMENT OF OBJECTS AND REASONS

The State Government is continuously endeavouring to provide free and compulsory education for all children until they complete the age of fourteen years as envisaged in articles 19 and 45 of the Constitution of India and as a step further in that direction, it is proposed to have permanent scheme known as Vidyasahayak Scheme in the districts and areas of authorised municipalities and recognised private primary schools in the State. The scheme envisages employment of the growing number of unemployed qualified persons to teach pupils of primary schools and to assist teachers in such schools for a maximum period of five years. It is envisaged that the scheme would go a long way in spreading compulsory education even in the remote areas of the State and, after a maximum period of five years, the Vidyasahayaks would be an experienced group of persons available for being appointed as teachers, so as to enhance the efficiency of teaching in primary schools in the State. The scheme would also have the effect of reducing unemployment among the persons qualified to teach in primary schools. It is, therefore, proposed to amend sections 2, 13, 17, 20 and 63 of the Bombay Primary Education Act, 1947 so as to provide for maintaining such number of Vidyasahayaks in the primary schools under the control of district school board or an authorised municipality or in the recognised private primary schools, as in the opinion of the State Government, is necessary. It is also proposed to constitute a State Level Committee, namely Vidyasahayak Committee, Village Education Committee to create awareness and public participation in primary education and Village School Construction Committee by amending section 20:

For the purpose of selection as *Vidyasahayak*, it is proposed to have Selection Committees for district, authorised municipality and for recognised private primary schools. Appointment of the *Vidyasahayak* shall be made as per the directions given by the Selection Committee and subject to the provisions made in *Vidyasahayak* Scheme. New section 23A provides accordingly.

This Bill seeks to amend the Bombay Primary Education Act, 1947 to achieve the aforesaid object.

ANANDIBEN PATEL

FINANCIAL MEMORANDUM

Sub-section (1A) proposed to be inserted in section 20 of the Rombay Primary Education Act, 1947, by clause 5 of this Bill, if enacted and brought into force, provides for maintaining such number of *Vidyasahayaks* in every district school board, authorised municipality and recognised private primary school as in the opinion of the State Government or an authorised officer are necessary. As the *Vidyasahayak Yojana* is in force from 11.-6-1998, total 61,653 *Vidyasahayaks* are appointed and it fetches yearly expenditure of Rs. 184.95 crores from the consolidated fund of the State. If the total 61,653 *Vidyasahayaks* are appointed in the regular pay scale of primary teachers, the total yearly expenditure would be Rs. 517.88 crores. Thus total yearly saving would be Rs. 332.93 crores.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers in the following respects, namely:-

- Clause 2.—Clause (5A) proposed to be inserted in section 2 by sub-clause (i) of this clause empowers the State Government to appoint the Authorised Officer.
- Clause 5.—Clauses (5) and (6) proposed to be inserted in section 20 by sub-clause (2) of this clause empowers the State Government to prescribe by rules, the powers and functions of State Level Committee namely Vidyasahayak Committee, Village Education Committee and Village School Construction Committee.
- Clause 6.—(i) Clauses (a) to (c) of sub-section (1) of new section 23A proposed to be inserted by this clause, empowers the State Government to constitute Selection Committee consisting of such persons for every districts, every authorised municipality and recognised private primary schools for selection of Vidyasahayaks;
- (ii) sub-section (2) of new section 23A empowers the State Government to prescribe by rules, the qualifications for appointment as Vidyasahayaks;
- (iii) sub-section (3) of new section 23A empowers the State Government to prescribe by rules, the manner and criteria on which the Selection Committee shall select the *Vidyasahayaks*;
- (iv) sub-section (4) of new section 23A empowers the State Government to prescribe by rules, the Vidyasahayaks Scheme;
- (v) sub-section (5) of new section 23A empowers the State Government to prescribe the form of the contract for appointment and terms and conditions for appointment as *Vidyasahayak*;
- (vi) sub-section (6) of new section 23A empowers the State Government to prescribe by rules, duties of Vidyasahayak.
- Clause 7.—Sub-clause (1) of this clause empowers the State Government to make rules for the matters specified in this sub-clause.

The delegation of legislative power as aforesaid is necessary and is of a normal character.

Dated the 21st February, 2003

ANANDIBEN PATEL.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Gandhinagar, Dated the 21st, February, 2003 Secretary to the Government of Gujarat. Legislative and Parliamentary Affairs Department.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE BOMBAY PREVENTION OF GAMBLING (GUJARAT AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 4 OF 2003.

A BILL

further to amend the Bombay Prevention of Gambling Act, 1887.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. This Act may be called the Bombay Prevention of Gambling Short title (Gujarat Amendment) Act, 2003.

V Ex.-4-1

4-1

Amendment of section 6 of Bom.V of 1887. 2. In the Bombay Prevention of Gambling Act, 1887, in section 6, in sub-section (1), before clause (i), the following clauses shall be inserted, namely:-

Bom.V of 1887.

- "(ia) in any area of the State, not below the rank of Sub-Inspector of Police, authorised in each case by special warrant issued by the Additional Director General of Police (Law and Order) or whoever is holding that post in any rank or Additional Director General of Police C.I.D. (Crime); and
- (ib) in any area of police range not below the rank of Sub-Inspector of Police, authorised in each case by special warrant issued by the Special Inspector General of Police or Deputy Inspector General of Police appointed for the respective police range; and ".

STATEMENT OF OBJECTS AND REASONS

In the Bombay Prevention of Gambling Act, 1887, the authority to issue warrants for entry and search has been given to the Commissioner of Police and elsewhere to District Magistrate or Sub-Divisional Magistrates or Taluka Magistrates under section 6 of the Act.

Now, the Government intends to empower other higher police authorities too for more effectively checking the evil of gambling. These authorities would have a wider reach and the special warrants could be issued without delay so that culprits could be brought to book.

It is, therefore, considered necessary to insert clause (a) and (ib) in sub-section (1) of section 6 of the said Act to empower the Additional Director General of Police (Law and Order), or whoever is holding that post in any rank or Additional Director General of Police CID (Crime) and the Special Inspector General of Police or Deputy Inspector General of Police appointed for the respective police range to issue special warrant.

This Bill seeks to amend the said Act to achieve the aforesaid object

Dated the 21st February, 2003.

AMIT SHAH.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Gandhinagar,
Dated the 21st February, 2003

Secretary to the Government of Gujarat. Legislative and Parliamentary Affairs Department.

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PART - V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE DHIRUBHAI AMBANI INSTITUTE OF INFORMATION AND COMMUNICATION TECHNOLOGY BILL, 2003.

GUJARAT BILL NO. 5 OF 2003.

A DILL

to provide for the establishment of the Dhirubhai Ambani Institute of Information and Communication Technology, Gujarat by law and to confer the status of a University thereon and for matters connected therewith or incidental thereto.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Dhirubhai Ambani Institute of Information and Communication Technology Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

V Ex.-5-1

Definitions.

- 2. In this Act, unless the context otherwise requires, -
- (a) "Academic Council" means the Academic Council of the Institute constituted under section 14;
- (b) "Board " means the Board of Governors of the Institute constituted under section 10;
- (c) "Chairman" means the Chairman of the Board appointed under section 11;
- (d) "Deans" mean the Deans of the Institute appointed under section 21;
- (e) "Director" means the Director of the Institute appointed under section 18;
- (f) "Executive Registrar" means Executive Registrar of the Institute appointed under section 20;
- (g) "Finance Committee" means Finance Committee of the Institute constituted under section 16;
- (h) "Foundation" means the Dhirubhai Ambani Foundation, Mumbai,
- (i) "Institute" means the Dhirubhai Ambani Institute of Information and Communication Technology, Gandhinagar, Gujarat, a University established under section 3;
- (j) "Patron Trustee" means the Patron Trustee of the Dhirubhai Ambani Foundation, Mumbai;
- (k) "President" means the President of the Institute appointed under section 7;
- (I) "prescribed" means prescribed by the regulations,
- (m) "Regulations" means the Regulations of the Institute made under section 32.
- (n) "Society" means the Dhirubhai Ambani Institute of Information and Communication Technology Society, Gandhinagar, a society registered under the Societies Registration Act, 1860;

XXI of 1860.

(0)

"Trust" means the Dhirubhai Ambani Institute of Information and Communication Technology Society, Gandhinagar registered under the Societies Registration Act, 1860 and the Bombay Public Trust Act, 1950.

XXI of 1860. Bom. 29 of 1950.

> (1) There shall be established a University by the name of "The Dhirubhai Ambani Institute of Information and Communication Technology, · Gandhinagar, Gujarat".

Establishment incorporation of University.

- The President, the Board, the Academic Council, the Director, the (2)Dean, the Executive Registrar and all other persons who may hereafter become such officers or members so long as they continue to hold such office or membership, are hereby constitute a body corporate by "The Dhirubhai Ambani Institute of Information and Communication Technology, Gandhinagar, Gujarat".
- The Institute shall function as a non-affiliating University established (3)under this Act and it shall not affiliate any other college or institute for the award conferment of degree, diploma and certificate of its degree to the students admitted therein...
- The Institute shall not have any grant in aid or other financial assistance from the Central Government, any State Government, University Grants Commission, All India Council for Technical Education or any other authority or institutions of the Central Government or any State Government.
- The Institute shall be a body corporate by the name aforesaid, (5) having perpetual succession and common seal with power, subject to the provisions of this Act, to acquire and hold property, to contract and shall, by the said name, sue and be sued.
- In all suits and other legal proceedings by or against the Institute, the pleadings shall be signed and verified by the Executive Registrar and all processes in such suits and proceedings shall be issued to, and served on the Executive Registrar.
- The headquarters of the Institute shall be at Gandhinagar, Gujarat. (7)

Objects of the Institute.

- 4. The objects of the institute shall be to develop a culture for and bring about an awareness of Information and Communication Technology and to actively participate in the formulation and implementation of a National Action Plan for Information Technology. The objects of the Institute shall be as follows, namely:
 - to create centres of excellence for imparting state-of-the-art education, training and research in the fields of information and communication technology;
 - (ii) to create, capabilities for development of multimedia content and its distribution;
 - (iii) to create capabilities for upgrading information and communication technology infrastructure to the global standards;
 - (iv) to develop patterns of teaching and training at various levels of educational accomplishment so as to set a high standard of information and communication technology education and its applications;
 - (v) to function as a learning resource centre for knowledge management and entrepreneurship development in the area of information and communication technology;
 - (vi) to provide for inter-relationships for national and global participation in the field of information and communication technology and its allied fields, and
 - (vii) establish close linkage with industry to make teaching, training, and research at the Institute relevant to the needs of the economy, at national and global level.

Institute open to all irrespective of sex, religion, class, creed or opinion. 5. (1) No person shall be excluded from any office of the University or from membership of any of its authorities or from admission to any degree, diploma or other academic distinction or course of study on the sole ground of sex, race, creed, caste, class, place of birth, religious belief or political or other opinion.

- It shall not be lawful for the University to impose on any person any (2)test whatsoever relating to sex, race, creed, caste, class, place of birth, religious belief or profession of political or other opinion in order to entitle him to be admitted as a teacher or a student or to hold any office or post in the Institute or to qualify for any degree, diploma or other academic distinction or to enjoy or exercise any privileges of the Institute or any benefaction thereof.
- Subject to the provisions of this Act, the Institute shall exercise the Powers and following powers and perform the following functions, namely:-

functions of the Institute.

- to administer and manage the Institute and such centres for (ii) research, education and instruction as are necessary for the furtherance of the objects of the Institute;
- to provide for instruction, training and research in such branches of knowledge or learning pertaining to information and communication technology and allied areas and for the advancement and dissemination of information communication technology and allied areas;
- to conduct innovative experiments in new methods and (iii) technologies in the field of information and communication technology in order to achieve international standards of such education, training and research;
- to prescribe courses and curricula and provide for flexibility (iv) . in the education system and delivery methodologies including electronic and distance learning;
- to hold examinations through electronic mode also and (v) confer degrees, diplomas or grant certificates, and other academic distinctions or titles on persons subject to such conditions as the Institute may determine, and to withdraw or cancel any such degrees, diplomas, certificates, or other academic distinctions or titles in the manner prescribed by the Regulations;

- (vi) to confer honorary degrees or other distinctions in the manner prescribed by the Regulations;
- (vii) to establish such special centers, specialized study centers or other units for research and instruction as are, in the opinion of the Institute, necessary for the furtherance of its objects;
- (viii) to provide for printing, reproduction and publication of research and other works and to organise exhibitions;
- (ix) to sponsor and undertake research in all aspects of information and communication technology and allied areas;
- to collaborate or associate with, advise, administer, control, develop, maintain, or take over by way of merger or otherwise, any educational institution with like or similar objects;
- (xi) to develop and maintain linkages with educational or other institutions in any part of the world having objects wholly or partially similar to those of the Institute, through exchange of teachers and scholars, and generally in such manner as may be conducive to their common objects;
- (xii) to develop and maintain relationships with teachers, researchers, and domain experts in information and communication technology and allied areas in any part of the world for achieving the objects of the Institute;
- (xiii) to regulate the expenditure and to manage the finances and to maintain accounts of the Institute;
- (xiv) to receive funds from industry, national and international organisations or any other source as gifts, donations, benefactions, bequests and by transfers of movable and immovable properties, for the purposes and objects of the Institute;

- (xv) to establish, maintain and manage, halls and hostels for the residence of students;
- (xvi) to supervise and control the residence and regulate the discipline of students of the Institute and to make arrangements for promoting their health and general welfare and cultural activities:
- xvii) to fix, demand and receive or recover fees and such other charges as may be prescribed by the Regulations;
- (xviii) to institute and award fellowships, scholarships, prizes, medals and other awards;
- (xix) to purchase or to take on lease or accept as gifts or otherwise any land or building or works which may be necessary or convenient for the purpose of the Institute and on such terms and conditions as it may think fit and proper and to construct or after and maintain any such building or works;
- (xx) to sell, exchange, lease or otherwise dispose of all or any portion of the properties of the Institute, movable or immovable, on such terms as it may think fit and consistent with the interest, activities and objects of of the Institute;
- (xxi) to draw and accept, to make and endorse, to discount and negotiate, Government of India and other promissory notes, bills of exchange, cheques or other negotiable instruments;
- (xxii) to raise and borrow money on bond, mortgages, promissory notes or other obligations or securities founded or based upon all or any of the properties and assets of the Institute or without any securities and upon such terms and conditions as it may think fit and to pay out of the funds of the Institute, all expenses incidental to the raising of money, and to repay and redeem any money borrowed;

- (xxiii) to invest the funds of the Institute in or upon such securities and transpose any investment from time to time in such manner as it may deem fit;
- (xxiv) to execute conveyances regarding transfers, mortgages, leases, licenses, agreements and other conveyances in respect of property, movable or immovable including Government securities belonging to the Institute or to be acquired for the purpose of the Institute;
- (xxv) to admit the students for the courses offered by the Institute in the manner prescribed by the Regulations;
- (xxvi) to create academic, technical, administrative, ministerial and other posts and to make appointments thereto;
- (xxvii) to regulate and enforce discipline among the employees of the Institute and to provide for such disciplinary measures as may be prescribed by the Regulations;
- (xxviii) to institute professorship, associate professorship, assistant professorship, readerships, lecturerships, and any other teaching, academic or research posts and to prescribe qualifications for them;
- (xxix) to appoint persons as professors, associate professors, assistant professors, readers, lecturers or otherwise as teachers and researchers of the Institute;
- officer or authority of the Institute may, by order, delegate his or its powers except the power to make regulations to any other officer or authority under his or its control and subject to the condition that the ultimate responsibility for the exercise of the power so delegated shall continue to vest in the officer or authority delegating them;
- (xxxi) to do all such other acts and things as the Institute may consider necessary, conducive or incidental to the

attainment or enlargement of all or any of the objects of the Institute.

7. (1) The Patron Trustee of the Dhirubhai Ambani Foundation shall be the President of the Institute for life at his pleasure. He may at his pleasure designate any other permanent Trustee of the Trust to be the President of the Institute.

President.

- (2) The President shall have, subjects to the provisions of this Act, power to cause an inspection or review to be made by such person or persons as he may direct, of the Institute, its buildings, libraries, equipment and systems and processes and of any institution or centre maintained by the Institute, and also of the examinations, teaching, research and other work conducted or done by the Institute and to cause an inquiry to be made in like manner in respect of any matter connected with the administration and finances of the Institute.
- 8. The following shall be the authorities of the Institute, namely:-

Authorities of Institute.

- (a) the Board;
- (b) the Academic Council;
- (c) the Finance Committee; and
- (d) such other authorities as may be declared by the Regulations to be authorities of the Institute.
- 9. The following shall be the officers of the Institute, namely:-

Officers of Institute.

- (a) the Director,
- (b) the Deans,
- (c) the Executive Registrar, and
- (d) such other persons as may be declared by the Regulations to be officers of the Institute.
- 10. (1) The Board of Governors of the Institute shall consist of the following members, namely:-

Board of Governors.

- (i) The President shall be the Chairman of the Board;
- (ii) two representatives of the Trust;
- (iii) Director of the Institute;
- (iv) two Deans of the Institute, by rotation, to be nominated by the Director;
- (v) Secretary to Government, Science and Technology

 Department, Government of Gujarat;
- (vi) three experts academicians to be nominated by the President;
- (vii) three experts representing other disciplines such as finance, legal, management, humanities to be nominated by the President; and
- (viii) two representatives of the Industries to be nominated by the President.
- (2) The Executive Registrar shall be the Secretary of the Board.

Chairman of the Board.

- 11. (1) The Chairman shall preside over at the meetings of the Board and at the convocations of the Institute.
 - (2) The Chairman shall exercise such other powers and perform such other duties as may be assigned to him by this Act or the Regulations.

Powers and functions of the Board.

- 12. (1) Subject to the provisions of this Act, the Board shall be responsible for the general superintendence, direction and control of the affairs of the Institute and shall exercise all the powers of the Institute, and shall have the power to review the acts of the Academic Council and the Finance Committee;
- (2) Without prejudice to the provisions of sub-section (1), the Board shall have the following powers and functions, namely:-
- (i) to take decisions on question of policy relating to the administration and working of the Institute;
- (ii) to institute courses of study at the institute:

- (iii) to make Regulations;
- (iv) to consider and approve the annual report and the annual accounts of the Institute for every financial year;
- (v) to invest monies and funds of the Institute and take decisions on the recommendations of the Finance Committee;
- (vi) to publish or finance the publication of studies, treaties, books, periodicals, reports and other literature and to sell or arrange for the sale as it may deem fit from time to time;
- (vii) to create or abolish posts of teachers and other employees of the institute;
- (viii) to appoint such committees as it considers necessary for the exercise of its powers and the performance of its duties under this Act;
- (ix) to delegate any of its powers to the Director, Deans, Executive Registrar, or any other officer, employee or authority of the Institute or to a committee appointed by it; and
- (x) to exercise such other powers and perform such other functions as may be conferred or imposed upon it by this Act or the Regulations, and all such other powers for achieving the objects of the Institute.
- (1) Save as otherwise provided in this section, the term of nominated members of the Board shall be three years from the date of nomination;

Terms of office and vacancies among members of the Board.

- (2) an ex-officio member shall continue so long as he holds the office by virtue of which he is such member;
- (3) any vacancy in the Board occurring before the next reconstitution or before the expiry of the prescribed period shall be filled by nomination of another person by the President;
- (4) a member nominated under sub-section (3) shall continue for the remainder of the term of a member in whose place he is nominated;

- (5) an outgoing member shall be eligible for re-nomination for the next term;
- (6) a member may resign his office by writing under his hand addressed to the President but he shall continue in office until his resignation has been accepted by the President.

Academic Council.

- 14. (1) The Academic Council of the Institute shall consist of the following members, namely:
 - (i) the Director of the Institute, ex officio, who shall be the Chairman of the Academic Council;
 - (ii) two academicians or professionals, to be nominated by the Board;
 - (iii) two external academicians or professionals in the area of information and communication technology, to be nominated by the Director;
 - (iv) two Deans of the Institute, by rotation to be nominated by the Director;
 - one Professor from each discipline of the Institute, by rotation to be nominated by the Director; and
 - (vi) the Executive Registrar who shall be the non-member Secretary of the Council.
 - (2) The term of office of the members other than the ex-officio member shall be three years.

Powers and duties of the Director.

- 15. Subject to the provisions of this Act, and the Regulations, the Academic Council of the Institute shall have the following powers, namely:
 - to exercise control and general regulation over the academic policies of the Institute and be responsible for the maintenance and improvement of standards of instruction, education and evaluation in the Institute;

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- (ii) to consider matters of general academic interest either on its own initiative or on a reference from the Faculty of the Institute or the Board and to take appropriate action thereon;
- (iii) to recommend to the Board such Regulations as are consistent with this Act regarding the academic functioning of the Institute including discipline of students; and
- (iv) to exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Regulations.
- 16. (1) The Finance Committee shall consist of the following members, namely:-

Finance Committee.

- (i) the Director of the Institute ex-officio shall be the Chairman of the Committee;
- (ii) one Member of the Board to be nominated by the President;
- (iii) one Dean of the Institute by rotation to be nominated by the Director;
- (iv) one expert to be nominated by the President; and
- (v) the Executive Registrar shall be the non-member Secretary of the Committee.
- (2) The term of office of the members other than the *ex-officio* member shall be three years.
- 17. Subject to the other provisions of this Act, the Finance Committee shall exercise the following powers and perform the following functions, namely:-

Powers and functions of Finance Committee.

- (i) to examine the annual accounts and annual budget estimates of the Institute and advise the Board thereon;
- (ii) to review the financial position of the Institute from time to time;

- (iii) to make recommendations to the Board on all financial policy matters of the Institute;
- (iv) to make recommendations to the Board on all proposals involving raising of funds, receipts and expenditure;
- (v) to provide guidelines for investment of surplus funds;
- (vi) to make recommendations to the Board on all proposals involving expenditure for which no provision has been made in the budget or for which expenditure in excess of the amount provided in the budget has been incurred;
- (vii) to examine all proposals relating to revision of scale, upgradation of the scale and those items which are not included in the budget, before they are placed before the Board; and
- (viii) to exercise such other powers and perform such other functions as may be conferred or imposed upon it by the Regulations.

Director.

- 18. (a) The Director shall be appointed by the Board out of the panel of names recommended from time to time by the Committee consisting of the following members, namely:-
 - (i) an eminent technologist to be nominated by the President;
 - (ii) an eminent educationist to be nominated by the President; and
 - (iii) one member of the Board to be nominated by the President.
 - (b) The President shall designate one member as the Chairman of the Committee;
 - (c) The term of office of the Director shall be determined by the Board for the period not exceeding five years.

- Notwithstanding anything contained in clauses (a) and (c) of sub-section (1), the Director of the Institute holding the office at the commencement of this Act, shall be deemed to have been appointed as the first Director.
- Where a vacancy in the office of Director occurs and it (e) cannot be conveniently and expeditiously filled up in accordance with the provisions of clauses (a) and (c) of this section and if there is any emergency, the President, in consultation with the Board, may appoint any suitable person to be the Director and may, from time to time, extend the term for a period not exceeding one year;
- The conditions of service of the Director, including salary allowances, leave, pension and provident fund shall be such as may be prescribed by the Board and until so prescribed, shall be determined by the President.
- (1) The Director shall be the Chief Executive and Academic Officer Powers and of the Institute. He shall preside over at the meetings of the Academic Council and Finance Committee.

- Without prejudice to the generality of the provision contained in sub-(2)section (1), the Director shall
 - exercise general supervision and control over the affairs of (i) the institute;
 - (ii). ensure implementation of the decisions of the authorities of the Institute;
 - be responsible for imparting of instruction and maintenance (iii) of discipline in the Institute; and
 - exercise such other powers and perform such other duties (iv) as may be assigned to him under this Act or the Regulations or as may be delegated to him by the Board or the President, as the case may be.

(3) Where any matter is of urgent nature requiring immediate action and the same cannot be immediately dealt with by the Chairman or authority or body of the Institute empowered under this Act to deal with it, the Director may take such action as he may deem fit and shall forthwith report the action taken by him to the Chairman or authority or body of the Institute who or which, in the ordinary course, would have dealt with the matter.

Provided that if such authority or other body is of the opinion that such action ought not have been taken by the Director, it may refer the matter to the Chairman who may either confirm the action taken by the Director or annul the same or modify it in such manner as he thinks fit, and thereupon it shall ceas3```e to have effect or as the case may be, shall take effect in such modified form; so however such modification or annulment shall be without prejudice to the validity of anything previously done by or under the orders of the Director.

(4) Where the exercise of the power by the Director under sub-section (3) involves the appointment of any person, such appointment shall be confirmed by the competent authority empowered to approve such appointment, in accordance with the provisions of this Act and the Regulations, not later than six months from the date of order of the Director, otherwise the same shall cease to have effect on the expiration of a period of six months from the date of order of the Director;

Executive Registrar.

- 20. (1) The Executive Registrar shall be appointed by the Institute in such manner and on such terms and conditions as may be prescribed by the Regulations;
- (2) The Executive Registrar shall exercise the following powers and perform following duties, namely:-
 - (i) he shall be responsible for the custody of records, common seal, the funds of the institute and such other property of the Institute;

- (ii) he shall place before the Board and other authorities of the Institute, all such information as may be necessary for transaction of its business;
- (iii) he shall be responsible to the Director for the proper discharge of his functions;
- (iv) he shall, subject to the control of the Director, be responsible for the administration and services of the Institute and conduct the examinations and make all other arrangements necessary therefor and be responsible for the execution of all processes connected therewith;
- (v) he shall attest and execute all documents on behalf of the Institute: and
- (vi) he shall exercise such other powers and perform such other duties as may be assigned to him under this Act, the Regulations or as may be delegated to him by the Board or the Director.
- 21. (1) The Deans of the Institute shall be appointed by the Director, with the approval of the Chairman of the Board, from amongst the Faculty of the Institute;
- (2) The Deans shall assist the Director in managing the academic and other affairs of the Institute and shall exercise such powers and perform such functions as may be prescribed by the Regulations or be entrusted to them by the Director.
- 22. The Trust shall place funds at the disposal of the Institute to be called the Permanent Endowment Fund of a sum of five crores of rupees or a sum required for meeting the full operational expenditure of the Institute for three years, in long term interest bearing securities issued or guaranteed by the Central or State Government. On the termination of the involvement of the trust and after meeting the operational expenditure for three years, out of the Permanent Endowment Fund, if there is any unused balance that shall be paid back to the Trust.

The Deans.

Permanent
Endowment
Fund of the
Institute.

Payment to Institute, 23. The Trust may pay to the Institute from time to time such sums of money and in such manner as may be considered necessary for the exercise of its powers and discharge of its functions under this Act.

Funds of Institute.

- 24. (1) The Institute shall have its own funds consisting of -
 - (i) all monies provided by the Trust;
 - (ii) all fees and other charges received by the Institute;
 - (iii) all monies received by the Institute by way of grants,
 loans, gifts, domations, benefactions, bequests or
 transfers;
 - (iv) all monies received by the Institute from the collaborating Industry in terms of the provisions of the Memorandum of Understanding between the Institute and the Industry, for establishment of sponsored chairs, fellowships and infrastructure facilities of the Institute; and
 - (v) all monies received by the Institute in any other manner or from any other source.
 - (2) All funds of the Institute shall be deposited in such banks or invested in such manner as the Board may decide on recommendation of the Finance Committee.
 - (3) The funds of the institute shall be applied towards the expenses of the institute including expenses incurred in the exercise of its powers and discharge of its functions.

Accounts and Audit.

25. (1) The Institute shall maintain proper accounts and other relevant records, and prepare an annual statement of accounts, including the income and expenditure account and the balance sheet, in such form and in such manner as may be prescribed by the Regulations.

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- (2) The Institute shall adopt a proper system of internal checks and balances and controls in the discharge of its finance, accounting and auditing functions as may be prescribed by the Regulations.
- (3) The Accounts of the Institute shall be audited not less than once per year by a statutory auditor who shall be a Chartered Accountant or a firm of Chartered Accountants as defined in the Chartered Accountant Act, 1949 who shall be appointed by the Board.
- (4) The Accounts of the Institute certified by the person or firm so appointed or any other person authorised in this behalf together with the audit report thereon shall be placed before the Board and the Board may issue such instructions to the Institute in respect thereof as it deems fit and the Institute shall comply with such instructions.
- (5) The Accounts of the Institute shall be audited by an internal auditor who shall be a Chartered Accountant or a firm of Chartered Accountants appointed by the Board, to ensure concurrent audit of all books of accounts, and such periodic internal audit reports shall be placed before the Board for review.
- (6) The Institute shall prepare each year a report of its activities during the previous year and submit it in the form of an annual report to the Board for review and approval.
- 26. (1) The Institute shall, with approval of the Board, constitute for the benefit of its officers, teachers and other employees, in such manner and subject to such conditions, as may be prescribed by the Regulations, such schemes of pension, provident funds and insurance as it may deem fit, and also aid in establishment and support of the associations, institutions, funds, trusts and conveyance calculated to benefit the staff and the students of the Institute;
- (2) Where any such provident fund has been so constituted, the provisions of the Provident Funds Act, 1925, shall apply to such fund as if it were a Government Provident Fund.

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Pension and Provident Funds. Acts and proceedings not to be invalidated by vacancies.

27. No act or proceeding of the Board, or any authority of the Institute or any committee constituted under this Act or by the Regulations shall be questioned on the ground merely of the existence of any vacancy in or defect in the constitution of, the Board, Authority or Committee of the Institute.

Conferment of degrees, diplomas and grant of certificates by the Institute.

28. Notwithstanding anything contained in any other law for the time being in force, the Institute shall have powers to confer degrees, diplomas and grant certificates, and confer degrees and honorary degrees, and other academic distinctions and titles, as approved by the Board.

Returns and Information. 29. The Institute shall furnish to the State Government, University Grants Commission and other statutory authorities such reports, returns, statements and other information as may be required by them from time to time.

Management of the Institute on Dissolution of the Trust. 30. The trust shall give a notice of not less than six months period to the State Government of its intention to dissolve the trust. Upon receipt of any notice from the Trust, the State Government shall make arrangements for administration of the Institute from the date of dissolution of the Trust and until the last batch of students in regular courses of the Institute complete their courses. The expenditure for administration of the Institute during taken-over period of its management shall be met out of the Permanent Endowment Fund of the Institute. On dissolution of the Trust, this fund shall be in the form of a corpus fund.

Powers of the State
Government.

31. The State Government shall have powers to issue directions from time to time as may be required to be followed by the Institute under the provisions of this Act, the Regulations made thereunder and under any other law for the time being inforce.

- 32. (1) Subject to the provisions of this Act, the Board shall have, in Regulations. addition to all other powers vested in it, the power to make Regulations to provide for the administration and management of the affairs of the Institute.
- (2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:-
 - the summoning and holding of meetings of the authorities of the Institute, other than the First Meeting of the Board, and the quorum and conduct of business at such meetings;
 - the power and functions to be exercised and discharged by the President of the Board of the Institute;
 - (iii) the constitution, powers and duties of the authorities, bodies and other committees of the Institute established under this Act, the qualifications and disqualifications for membership of such authorities, term of office of the membership, appointment and removal of members thereof and other matters connected therewith;
 - (iv) the procedure to be followed by the Board and any Committee or other body constituted under this Act or by the Regulations in the conduct of the business, exercise of the powers and discharge of the functions;
 - (v) the procedure and criteria to be followed in establishing courses of study and admission of students;
 - (vi) the procedure to be followed for enforcing discipline in the Institute;
 - (vii) the management of the properties of the Institute;
 - (viii) the degrees, diplomas, certificates and other academic distinctions and titles which may be conferred or granted by the Institute and withdrawal or cancellation of any such

- degrees, diplomas, certificates and other academic distinctions and titles and the requirements thereof;
- (ix) the conduct of examinations including the term of office and appointment of examiners;
- (x) the creation of posts of Professors, Associate Professors, Assistant Professors, Readers, Lecturers or equivalent academic designations or posts, officers and employees of the Institute, and the appointment of persons to such posts including the qualifications requisite therefor;
- (xi) the fees and other charges which may be paid to the Institute for the courses, training, facilities and services provided by it;
- (xii) the manner and conditions for constitution of insurance, pension and provident funds and such other schemes for the benefit of officers, teachers, and other employees of the Institute;
- (xiii) the terms and conditions applicable for association of the Institute with other institutions;
- (xiv) the preparation of budget estimates and maintenance of accounts;
- (xv) the mode of execution of contracts or agreement by or on behalf of the Institute;
- (xvi) the classification and procedure for appointment of officers and staff of the institute;
- (xvii) the terms and tenure of appointments, salaries and allowances, contractual services, rules of discipline and other conditions of service of the Director, other officers, teachers and employees of the Institute;
- (xviii) the terms and conditions governing deputation of officers and staff of the Institute;

(1)

- the powers and duties of the Director and other officers, (xix) teachers and employees of the Institute;
- the terms and conditions governing fellowship, scholarships, (xx)· stipends, medals and prizes,
- the authentication of the orders and decisions of the Board; (xxi)
- the matters relating to hostels and halls of residence (iixx) including disciplinary control therein; and
- all matters which, by this Act, are to be or may be prescribed (iiixx) by the Regulations.

If any difficulty arises with respect to the establishment of the Institute or in connection with the first meeting of any authority of the Institute or otherwise in first giving effect to the provisions of this Act and the Regulations, the President of the Institute may, at any time, before all authorities of the Institute have been constituted, by order, make any appointment or do anything consistent, so far as may be, with the provisions of this Act and the Regulations, which appear to him necessary or expedient for the purpose of removing the difficulty and every such order shall have effect as if such appointment or action had been made or taken in the manner provided in this Act and the Regulations:

difficulties at the commencement.

Provided that before making any such order the President may ascertain and consider the opinion of the Director and of such appropriate authority of the institute as may have been constituted.

Notwithstanding anything contained in this Act,-34.

the Director may, with the prior approval of the President and subject to availability of funds, discharge all or any of the functions of the Institute for the purpose of carrying out the provisions of this Act and the Regulations and for that purpose may exercise any power or perform any duties which by this Act and the Regulations are to be exercised or performed by any authority of the Institute

Transitory provisions. until such authority comes into existence as provided by this Act and the Regulations;

- the Board of the Institute functioning as such immediately before the commencement of this Act shall continue to so function until the Board is constituted for the Institute under this Act, but on the constitution of the Board under this Act, the members of the Board holding office before such constitution shall cease to hold office;
- (3) the Academic Council of the Institute functioning as such immediately before the commencement of this Act shall continue to so function until the Academic Council is constituted for the Institute under this Act, but on the constitution of the Academic Council under this Act, the members of the Academic Council holding office before such constitution shall cease to hold office;
- (4) 7 the Finance Committee of the Institute functioning as such immediately before the commencement of this Act shall continue to so function until the Finance Committee is constituted for the Institute under this Act, but on the constitution of the Finance Committee under this Act, the members of the Finance Committee holding office before such constitution shall cease to hold office;
- (5) until the first Regulations of the Institute are made under this Act, the existing rules and regulations of the Dhirubhai Ambani Institute of Information and Comnunication Technology Society, as approved by the Board as in force immediately before the commencement of this Act, shall continue to apply to the Institute, in so far as they are not inconsistent with the provisions of this Act.

Indemnity.

35. No suit, prosecution or other legal proceedings shall lie against and no damages shall be claimed from the Institute, the Director, the authorities or officers of the Institute or any other person in respect of anything which is done in good faith or purporting to be done in pursuance of this Act or any Regulation made thereunder.

STATEMENT OF OBJECTS AND REASONS

Since long, it was felt that there is a genuine need to create a sound infrastructure in the State of Gujarat in the field of Information and Communication Technology of international standards and to actively participate in the fructification of the national plan for the information technology. It is well known that the rate of change in today's technological world is extremely fast and unless the information technological education system is allowed to keep pace with these changes, the same will be rendered redundant. With this objective, the Dhirubhai Ambani Foundation has created a trust for establishing an Institute of national level to provide an opportunity for quality education in Information Technology and has proposed to the State Government to enact a special law for giving the status of University to this Institute.

This Bill proposed to allow the setting up of a University for imparting information technology related courses which aims at to promote, reform and innovation. It is, therefore, considered necessary to establish the Dhirubhai Ambani Institute of Information and Communication Technology in the State of Gujarat by enacting a law.

This Bill seeks to achieve the aforesaid objects.

The following notes on clauses explain in brief some of the important provisions of the Bill.

- Clause 1.- This clause provides for short title and commencement.
- Clause 2.- This clause defines certain terms used in the Bill.
- Clauses 3, 4 and 6.- These clauses provide for the establishment and incorporation, objects and powers of the Institute.
- Clause 7.- This clause provides that the patron trustee of the Dhirubhai Ambani Foundation shall be the President of the Institute, and provides for powers of the President.
- Clauses 8 and 9.- These clauses relates to authorities and officers of the Institute.
- Clauses 10, 12 and 13.- These clauses relate to the constitution, powers and functions of the Board of Governors and terms of office and filling up of vacancies of members.
- Clause 11.- This clause relates to Chairman and its powers.
- Clauses 14 and 15.- These clauses relate to constitution of Academic Council and its powers and functions.
- Clauses 16 and 17.- These clauses relate to constitution of Finance Committee and its powers and functions.

- Clause 18 and 19.- These clauses relate to Director and its powers and functions.
- Clause 20.-7 This clause relates to the Executive Registrar and its powers and functions.
- Clause 21.- This clause relates to Deans of the Institute and powers and functions to be performed by him.
- Clauses 22 and 23.- These clauses relate to Permanent Endowment Fund of the Institute and payment to Institute.
- Clause 24.- This clause provides for University Fund.
- Clause 25.- This clause provide for the preparation of the annual financial estimates, annual accounts, audit and annual report.
- Clause 26.- This clause provides for the pension, provident fund and insurance of officers, teachers and other employees of the Institute:
- Clauses 28 and 29.- These clauses relate to conferment of degrees, diplomas and grant of certificates by the Institute and returns and information to be furnished to the State Government.
- Clause 30.- This clause relates to arrangements for administration of the Institute.
- Clause 31.- This clause relates to powers of the State Government to give directions as may be required from time to time.
- Clauses 32 to 35.- These clauses relate to make regulations, removal of difficulties at the commencement, transitory provisions and indemnity.

ANANDIBEN PATEL

FINANCIAL MEMORANDUM

Clause 22 of the draft Bill provides that there shall be Permanent Endowment Fund of the Institute of the sum of Rupees Five crores placed by the Trust for meeting the operational expenditure of the Institute for three years. Therefore, the expenditure shall be incurred from the said Fund. Hence, at present, the provisions of the Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

ANANDIBEN PATEL

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill provides for delegation of legislative powers in the following respects, namely:-

- Glause 1.- Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.
- Clause 6.- (i) Sub-clause (v) of this clause empowers the Institute to prescribe by regulations, the manner in which degrees and diplomas are to be conferred and certificates are to be granted and other academic distinctions or titles and also to withdraw or cancel such degrees, diplomas, certificate or other academic distinction or titles of person;
 - (ii) sub-clause (vi) of this clause empowers the Institute to prescribe by regulations, the manner in which honorary degrees or other distinctions are to be conferred by the Institute;
 - (iii) sub-clause (xviii) of this clause empowers the Institute to prescribe by regulations, the fees and other charges to be fixed, demanded, received or recovered by the Institute;
 - (iv) sub-clause (xxvii) of this clause empowers the Institute to prescribe by regulations, the manner in which the student shall be admitted to it for the courses offered by the Institute;
 - (v) sub-clause (xxix) of this clause empowers the Institute to prescribe by regulations, the disciplinary measures to be taken against the employees of the Institute for the purpose of regulating and enforcing discipline among the employees;
 - (vi) sub-clause (xxxii) of this clause empowers the Board, to prescribe by regulations, delegation of powers of the authorities or officers to any other authority or officer.
- Clause 8.- Sub-clause (d) of this clause empowers the Board to declare by regulations, such other authorities to be the authorities of the Institute.
- Clause 9. Sub-clause (d) of this clause empowers the Board to declare by regulations such other persons to be the officers of the Institute.
- Clause 11. Sub-clause (2) of this clause empowers the Chairman to exercise such other powers and perform such other duties as may be assigned to him by the regulations.

- Clause 12. Para (x) of sub-clause (2) of this clause empowers the Board by Regulations to exercise such other powers and perform such other functions as may be conferred or imposed upon it.
- Clause 15.- Sub-clause (iv) of this clause empowers the Academic Council to exercise such other powers and perform such other duties as may be conferred or imposed upon it by the regulations.
- Clause 17 Sub-clause (viii) of this clause empowers the Finance Committee by regulation to exercise such other powers and perform such other duties as may be conferred or imposed upon it.

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- Clause 18.- Sub-clause (f) of this clause empowers the Board to prescribe by regulations, the conditions of services of the Director including salary, allowances, leave, pension and provident fund.
- Clause 19.- Para (iv) of sub-clause (2) of this clause empowers the Director to exercise such other powers and perform such other duties as may be assigned to him by the regulations.
- Clause 20.- (i) Sub-clause (1) of this clause empowers the Board to prescribe by regulations, the manner and terms and conditions, subject to which the Executive Registrar shall be appointed by the Institute:
 - (ii) para (vi) of sub-clause (2) of this clause empowers the Executive Registrar to exercise such other powers and perform such other duties as may be assigned to him by the regulations.
- Clause 21 Sub-clause (2) of this clause empowers the Board to prescribe by regulations, the powers and functions subject to which the Dean shall exercise powers and perform the functions.
- Clause 25.- (i) Sub-clause (1) of this clause empowers the Board to prescribe by regulations the form and the manner in which proper account, other relevant records, annual statement of accounts, the income and expenditure account and the balance sheet shall be maintained and prepared respectively.
 - (ii) sub-clause (2) of this clause empowers the Board to prescribe by regulations, the manner of adoption of a proper system of internal checks and balances and controls by the Institute.

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Clause 26. Sub-clause (1) of this clause empowers the Board to prescribe by regulations, the manner and the conditions for constituting schemes of pension, provident fund and insurance for the officers, teachers and other employees of the institute.

Clause 32.- Sub-clause (1) of this clause empowers the Board to make regulations for the administration and management of the affairs of the Institute and sub-clause (2) empowers the Board to make Regulations for all or any of the matters specified therein.

The delegation of legislative powers as aforesaid is necessary and of a normal character.

Dated the 21st February, 2003.

ANANDIBEN PATEL.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Gandhinagar, Dated the 21st February, 2003.

Secretary to the Government of Gujarat. Legislative and Parliamentary Affairs Department.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.





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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

> THE KACHCHH UNIVERSITY BILL, 2003. GUJARAT BILL NO. 6

A BILL

to establish and incorporate a teaching and affiliating University in the State of Gujarat to be known as the Kachchh University.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

- (1) This Act may be called the Kachchh University Act, 2003.
- This section shall come into force at once and the remaining provisions shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions and any reference in any such provision to the date of the commencement of this Act shall be construed as the reference to the date of coming into force of that provision.

Short title and commencement.

Definitions.

2. In this Act, unless the context otherwise requires, -

- (1) "affiliated college" means a college affiliated under section 5 or 35;
- (2) "approved institution" means an institution approved under section 38;
- "autonomous college", "autonomous institution" or "autonomous department" means a college, institution or department which exercise the powers under section 44;
- (4) "college" means a degree college or an affiliated college teaching any of the courses leading to a diploma or a degree;
- (5) "degree college" means an affiliated college which is authorised to submit its students to an examination qualifying for any degree of the University;
- (6) "department" means a department designated as such by Ordinances with reference to a subject or a group of subjects;
- (7) "head master" means the head of a secondary school;
- (8) "hostel" means a unit of residence for students maintained or recognised by the University under this Act;
- (9) "principal" means the head of a college;
- (10) "recognised institution" means an institution recognised under section 37;
- (11) "registered graduate" means a graduate registered under the provisions of this Act;
- (12) "secondary school" means a secondary school registered or deemed to have been registered under section 31 of the Gujarat Secondary and Higher Secondary Education Act, 1972;
- "secondary teachers" means such class of teachers who are imparting instruction in secondary schools as may be declared to be secondary teachers by the Statutes;
- (14) "Statutes", "Ordinances", "Regulations" and "Rules" means respectively the Statutes, Ordinances, Regulations and Rules made under this Act and for the time being in force;
- (15) "teachers" means professors, readers, lecturers and such other persons imparting instructions in the University or a University college or an affiliated college or a recognised institution or an approved institution as may be declared to be teachers by the Statutes;
- (16) "Tribunal of arbitration" means the tribunal as referred to in section 69;
- (17) "University" means the Kachchh University constituted under this Act:
- (18) "University area" means the areas specified in the Schedule;
- (19) "University Department" means any post-graduate or research institution or department maintained by the University.

Guj. 18 of 1973.

CHAPTER II

THE UNIVERSITY

3. (1) The Chancellor, the first Vice-Chancellor, the first Pro-Vice-Chancellor of the University and the first members of the Court, the Executive Council and the Academic Council of the University and all persons who may hereafter become such officers or members so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of "Kachchh University".

Incorporation of the University.

- (2) The University shall have perpetual succession and a common seal and shall sue and be sued by the said name.
- (3) The University shall be competent to acquire and hold property, both moveable and immoveable, to lease, sell or otherwise transfer any moveable or immoveable property which may vest in or be acquired by it for the purposes of the University, to raise loan on the securities of its assets and to contract and do all other things necessary for the purposes of this Act;
- (4) The headquarters of the University shall be at Bhuj.
- 4. Subject to such conditions as may be prescribed by or under the provisions of this Act, the University shall have the following powers, namely:

Powers of the University.

- (1) to provide for instruction, including correspondence courses, teaching and training in such branches of learning and courses of study as it may think fit, to make provisions for research, advancement and dissemination of knowledge and conduct special undergraduate courses for talented students;
- (2) to promote equality of opportunities and social justice as enshrined in the Constitution of India and to be a catalyst in socio-economic transformation;
- (3) to promote national integration and preserve cultural heritage;
- (4) to make such provision as would enable affiliated colleges, recognised institutions and approved institutions to undertake specialisation of studies;
- (5) to establish, maintain, take over by agreement and manage colleges, departments and institutes of research or specialized studies;
- to organise common laboratories, libraries, museums and other equipments for teaching and research;
- (7) to establish within the University area or outside that area such field stations, campuses, specialised laboratories and other units for research and instructions and for post-graduate studies in a special subject;
- (8) to designate a college or institution or department or campus autonomous for encouraging innovations;

- (9) to provide for common resources centres for a group of colleges in the region, in terms of libraries, computer services, etc. and also to provide for inter-study disciplinary courses for study and research;
- (10) to institute professorships, readerships, lecturerships and other posts of teachers required by the University,
- (11) to guide teaching and research work in colleges, University Departments and recognised institutions;
- (12) to organise and undertake extra mural studies, training and extension services;
- (13) to lay down the courses of instruction for the various examinations;
- (14) to institute degrees, diplomas and other academic titles and distinctions;
- (15) to hold examinations or tests and confer degrees and diplomas on, and grant certificates to, persons who –
- (a) have pursued approved courses of study in the University or an affiliated college, unless exempted therefrom, in the manner prescribed by the Statutes, Ordinances, Regulations and Rules and have passed the examinations or tests prescribed by the University, or
- (b) have carried on research under conditions prescribed by the Statutes, Ordinances, Regulations or rules;
- (16) to confer honorary degrees or other academic distinctions in the manner laid down by the Statutes;
- (17) to grant such diplomas to, and to provide such lectures, instructions and training to, persons who are not enrolled students of the University, as may be determined by the Statutes, Ordinances, Regulations and rules;
- (18) to withdraw or cancel any degree, diploma or certificate conferred or granted by the University in the manner prescribed by the Statutes;
- (19) to associate or admit educational institutions with, or to the privileges of the University by way of affiliation, recognition or approval;
- (20) to withdraw or modify either in whole or in part, affiliation, recognition or approval of educational institutions;
- (21) to inspect colleges, recognised institutions and approved institutions and to take measures to ensure that proper standards of instruction, teaching and training are maintained in them and that adequate library and laboratory provisions are made therein;
- (22) to lay down and regulate the salary scales, allowances and other conditions of service of the members of the teaching, other academic and non-teaching staff of the University;
- (23) to lay down and regulate the salary scales, allowances, and other conditions of service of the members of the teaching, other academic and non-teaching staff in the affiliated colleges and recognised and approved institutions;

- (24) to provide for the recognition of Student's Unions or associations of teachers, academic staff or other employees of the University, affiliated colleges and recognised institutions;
- (25) (a) to control and co-ordinate the activities of, and to give financial aid to, affiliated colleges and recognised and approved institutions; and
 - (b) to regulate the fees to be paid by the students in affiliated colleges and recognised and approved institutions;
- (26) to hold and manage trusts and endowments;
- (27) to institute and award fellowships, travelling fellowships, scholarships, studentships, medals, prizes and other awards;
- (28) to make special provisions for the spread of University education among classes and communities which are educationally backward;
- (29) to lay down courses of study to meet the requirements of rural planning, development and reconstruction and to provide for instruction, teaching and training in such courses;
- (30) to make special provision for disseminating knowledge and promoting arts and culture;
- (31) to fix, to demand and to receive or recover such fees and other charges as may be prescribed by the Ordinances;
- (32) to establish, maintain and manage hostels;
- (33) to recognise hostels not maintained by the University, to inspect such hostels and to withdraw recognition therefrom;
- (34) to co-ordinate, supervise, regulate and control the residence, conduct and discipline of the students and all categories of employees and to lay down service conditions of the employees of the University and to make arrangements for promoting their health and general welfare;
- (35) to take disciplinary action against the students of the University and to impose such punishment upon them as may be deemed fit for breach of discipline or misconduct, within or outside the University including the use of unfair means at an examination or in relation thereto by themselves or by any other persons or abatement thereof;
- (36) to conduct, co-ordinate, supervise, regulate and control post-graduate teaching and research work in the University Departments and affiliated colleges and recognised institutions;
- (37) to co-ordinate, supervise, regulate and control the conduct of undergraduate teaching and instruction in the affiliated colleges and to undertake the same in University colleges;
- (38) to institute and manage -
 - (a) Printing and Publication Department,
 - (b) University Extension Boards,
 - (c) Information Bureau, and
 - (d) Employment Bureau;

- (39) to make provision-
 - (a) for continuing education, adult education, extra-mural teaching, extension services and other recognised educational activities;
 - (b) for Physical Education, National Cadet Corps, National Services Scheme, National Sports Organisation and such other recognised activities; and
 - (c) for sports and athletic activities;
- (40) to co-operate with any other Universities, authorities or associations or any other public or private bodies in such manner and for such purposes as the University may determine;
- (41) to make arrangements for training for competitive examinations for recruitment of services under the Union and State Governments;
- (42) to promote the development of the study of Gujarati and Hindi (in Devanagri script) and other languages and the use of Gujarati or Hindi (in Devanagri script) or both as the media of instruction and examination;
- (43) to a cquire, hold, manage and dispose of any property movable and immovable, including trust or endowed property within or outside the University and to invest any funds representing such property in such manner as the University thinks fit;
- (44) to raise public loans on security of the assets of the University for the purpose of the University, with the previous approval of the State Government,
- (45) to generate resources by frugal and productive utilisation of the University resources;
- (46) to enter into any agreement for the incorporation in the University of any other institution and for taking over its rights, properties and liabilities and for any other purpose not repugnant to this Act;
- (47) to organise and conduct refresher courses, workshops, seminars and other programmes;
- (48) to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the object of the University and generally to cultivate and promote arts, science and other branches of learning and culture.

Jurisdiction and admission to privileges.

- 5. (1) No educational institution situated within the University area shall, save with the sanction of the State Government and the University, be associated in any way with, or seek admission to any privileges of, any other University established by law.
- (2) Any such privileges enjoyed from the Gujarat University before the date on which this Act comes into force by any educational institution situate within the University area shall be deemed to be withdrawn with effect from such date.
- (3) With effect on and from such date all educational institutions admitted to the privileges of the Gujarat University and situate within the University area shall be

Bom. L of 1949. deemed to be admitted to the privileges of the University and such institutions shall, on and from such date cease to be associated with and to enjoy the privileges of the Gujarat University and the Gujarat University Act, 1949 shall thereupon cease to apply to them. The University shall, as far as may be possible and consistent with this Act, admit such institutions to all such privileges as they had from the Gujarat University immediately before such date.

- (4) Any educational institution in the State of Gujarat situated outside the University area may, subject to such conditions and restrictions as the University and State Government think fit to impose, be admitted to the privileges of the University.
- 6. (1) No person shall be excluded from any office of the University or from membership of any of its authorities or from admission to any degree, diploma or other academic distinction or course of study on the sole ground of sex, race, creed, caste, class, place of birth, religious belief or political or other opinion:

Provided that the University may, subject to the previous sanction of the State Government maintain, affiliate or recognise any college or institution exclusively for women or reserve for women or for socially and educationally backward classes of citizens or for members of the Scheduled Castes and the Scheduled Tribes, seats for the purposes of admission as students in any institution maintained by the University.

- (2) It shall not be lawful for the University to impose on any person any test whatsoever relating to sex, race, creed caste, class, place of birth, religious belief or profession or political or other opinion in order to entitle him to be admitted as a teacher or a student or to hold any office or post in the University or to qualify for any degree, diploma or other academic distinction or to enjoy or exercise any privileges of the University or any benefaction thereof.
- 7. (1) The Chancellor shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, libraries, museums, workshops and equipments of any institution, college or hostel maintained, recognised or approved by, or affiliated to, the University, of the teaching and other work conducted by the University and of the conduct of examination held by the University and to cause an inquiry to be made in respect of any matter connected with the University. The Chancellor shall in every case give notice to University of his intention to cause an inspection or inquiry to be made and University shall be entitled to be represented thereat.
- (2) The Chancellor shall communicate to the Executive Council his views with reference to the results of such inspection or inquiry and shall, after ascertaining the opinion of the Executive Council, advise the University on the action to be taken.
- (3) The Executive Council shall report to the Chancellor such action, if any, as it has taken or may propose to take upon the results of the inspection or inquiry. Such report shall be submitted within such time as the Chancellor may direct.
- (4) Where the Executive Council does not, within a reasonable time, take action to the satisfaction of the Chancellor, the Chancellor may, after considering any explanation furnished or representation made by the Executive Council, issue such directions as he may think fit and the Executive Council shall comply with such directions.

University open to all irrespective of sex, religion, class, creed or opinion.

Inspection and Inquiry.

(5) The State Government may, whenever it deems fit, cause a like inspection or inquiry to be made in the manner prescribed in sub-sections (1) to (3) and shall have, for the purposes of such inspection or inquiry, all the powers of the Chancellor under the said sub-sections.

CHAPTER III OFFICERS OF THE UNIVERSITY

Officers of the University.

- The following shall be the officers of the University, namely:
 - (i) The Chancellor,
- (ii) The Vice-Chancellor,
- (iii) The Pro-Vice-Chancellor, if any
- (iv) The Deans of Faculties,
- (v) The Registrar,
- (vi) The University Librarian, and
- (vii) Such other officers in the service of the University as may be declared by the Statutes to be the officers of the University.

Chancellor.

- (1) The Governor of the State of Gujarat shall be the Chancellor of the University.
- (2) The Chancellor shall, by virtue of his office, be the head of the University and the President of the Court and shall, when present, preside at the meetings of the Court and at any convocation of the University.
- (3) The Chancellor shall have such other powers as may be conferred on him by this Act or the Statutes.

Vice-Chancellor

10.

- (1) The Vice-Chancellor shall be appointed by the Chancellor in consultation with the State Government from amongst three persons recommended under sub-section (3) by a committee appointed for the purpose under sub-section (2)
- (2) (a) For the purposes of sub-section (1), the Chancellor shall appoint a Search Committee which shall consist of the following members, namely:
 - (i) one member to be nominated by the Chancellor;
 - (ii) two members (not being persons connected with the University or with any affiliated college, recognised institution or approved institution) out of whom one shall be a person nominated in the manner prescribed by the Statutes by the Executive Council and the

Academic Council jointly and the other shall be a person nominated in the manner prescribed by the Statutes by the Vice-Chancellors of all the Universities established by law in the State of Gujarat;

- (iii) one member to be nominated by the Chairperson of the University Grants Commission.
- (b) The nominee of the Chancellor shall be the Chairperson of the Search Committee.
- (c) A person nominated on the Search Committee shall not be eligible to accept honorary degree or any appointment on the post, honorary or otherwise, or nomination of any of the bodies of the University for the next six years.
- (3) The Committee so appointed shall, within such time and in such manner as may be prescribed by the Statutes, select three persons whom it considers fit for being appointed as Vice-Chancellor and shall recommend to the Chancellor the names of the persons so selected together with such other particulars as may be prescribed by the Statutes.
- (4) The Vice-Chancellor shall hold office for a term of three years and he shall be eligible for re-appointment to that office for a further term of three years only:

Provided that no person appointed as the Vice-Chancellor shall continue to hold his office as such after he attains the age of 65 years.

(5) The emoluments to be paid to the Vice-Chancellor, and the terms and conditions including the perquisites subject to which he shall hold office shall be such as may be determined by the State Government:

Provided that such emoluments or such terms and conditions shall not, during the currency of the term of the holder of that office, be varied to his disadvantage without his consent.

- (6) The Vice-Chancellor may, after giving one month's notice, resign from his office and shall cease to hold his office on the acceptance of his resignation by the Chancellor or from the date of expiry of the said notice period, whichever is earlier.
- (7) (a) During the leave or absence of the Vice-Chancellor, or
 - (b) in the event of a permanent vacancy in the office of the Vice-Chancellor, until an appointment is made under sub-section (1) to that office,

the Pro-Vice-Chancellor, and in the absence of the Pro-Vice-Chancellor, one of the Deans nominated by the Chancellor for that purpose shall carry on the current duties of the office of the Vice-Chancellor.

Powers of the Vice-Chancellor.

- 11. (1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall, in the absence of the Chancellor, preside at meetings of the Court and any convocation of the University. He shall be an ex-officio member and Chairperson of the Executive Council and of the Academic Council. He shall be entitled to be present with the right to speak at any meeting of any other authority or body of the University, but shall not be entitled to vote thereat unless he is a member of that authority or body.
- (2) The Vice-Chancellor shall have power to convene meetings of the Court, the Executive Council, the Academic Council and such other authorities of the University of which he is the Chairperson. He may delegate this power to any other officer of the University.
- (3) It shall be the duty of the Vice-Chancellor to ensure that this Act, the Statutes, Ordinances, Regulations and rules are faithfully observed and he shall have all powers necessary for this purpose.
- (4) (a) In any emergency which, in the opinion of the Vice-Chancellor requires that immediate action should be taken, he shall take such action as he deems necessary and shall at the earliest opportunity thereafter furnish information regarding his action to such officer, authority or body as would have in the ordinary courses dealt with the matter.
- (b) When action taken by the Vice-Chancellor under this sub-section affects any person in the service of the University, such person shall be entitled to prefer an appeal through the said officer, authority or body to the Executive Council within fifteen days from the date on which such action is communicated to him.
- (5) The Vice-Chancellor shall give effect to the orders of the Executive Council regarding the appointment, dismissal, suspension and punishment of the persons in the service of the University or teachers of the University or regarding the recognition or withdrawal of the recognition of any such teacher and shall exercise general control over the affairs of the University. He shall be responsible for the discipline of the University in accordance with this Act, the Statutes and Ordinances.
- (6) (a) Subject to the provisions contained in sub-section (4) and notwithstanding anything contained in sub-section (5), where the Vice-Chancellor after making such inquiry as may be deemed fit is of the opinion that the execution of any order or resolution of an authority specified in or declared under section 15, or the doing of anything which is about to be done or is being done by or on behalf of the University,-
 - (i) is inconsistent with the provisions of this Act or of any Statutes, Ordinances, Regulations or rules, or
 - (ii) is not in the interest of the University, or
 - (iii) is likely to lead to breach of peace;

he may forward a copy of the order or resolution or, as the case may be, refer the doing of the thing with a statement of reasons to the authority which made the order or passed the resolution or proposes to do the thing for reconsideration by that authority as to whether the said order or resolution may not be rescinded, or revised or modified in the manner's tated by him or the doing of the thing be refrained from.

- Where the authority after reconsideration revises or modifies the order or the resolution in the manner stated by the Vice-Chancellor, then notwithstanding anything contained in clause (a), such revised or modified order or resolution shall revive from the date of such revision or modification.
- Where the authority revises or modifies the order or resolution in such manner as is inconsistent with the manner stated by the Vice-Chancellor, the Vice-Chancellor shall refer the matter to the Chancellor for his decision.
- The Chancellor may, on such reference being made, revise or modify the order or resolution or direct that the order or resolution shall continue to being force with or without modification permanently or for such period as it may specify:

Provided that the order or resolution shall not be revised or modified or continued by the Chancellor without giving the concerned authority a reasonable opportunity of showing the cause against the order proposed to be made by him.

- The order, resolution or, as the case may be, the doing of thing shall remain in abeyance from the date of the action of the Vice-Chancellor of forwarding the copy of order or resolution or of making reference under clause (a) till the date of the order of the Chancellor under clause (d).
- The Vice-Chancellor in consultation with the Executive Pro-vice-12. (a) Council may decide to fill the office of the Pro-Vice- Chancellor. Chancellor or to keep it vacant.

- If the Vice-Chancellor decides to fill the office of the Pro-(b) Vice-Chancellor, the Pro-Vice-Chancellor shall be appointed by the Chancellor from amongst three persons recommended by the Vice-Chancellor.
- The term of office of the Pro-Vice-Chancellor shall be co-(2)terminus with that of the Vice-Chancellor.
 - Subject to the provisions of clause (a), he shall be eligible for **(b)** appointment to that office for a further term.
 - Notwithstanding anything contained in clauses (a) (c) where a vacancy occurs in the office of the Vice-Chancellor, the Pro-Vice-Chancellor shall continue to hold his office till such vacancy is filled and on the vacancy being so filled, the Pro-Vice-Chancellor shall cease to hold his office.
- The Pro-Vice-Chancellor shall be a whole time salaried officer and (3) his emoluments and conditions of service shall be such as may be determined by the State Government:

Provided that the emoluments and conditions of service of the holder of such office shall not during the currency of the term of the holder of that office, be varied to his disadvantage without his consent.

The Pro-Vice-Chancellor shall exercise such of the duties of the Vice-(4) Chancellor as the Vice-Chancellor may either specially or generally confer or impose on him with the approval of the Executive Council.

- (5) The Pro-Vice-Chancellor shall, in the absence of the Vice-Chancellor, or in the event of the Vice-Chancellor being unable to perform the duties of his office, exercise all the rights and powers and discharge all the functions and duties of the Vice-Chancellor.
- (6) The Pro-Vice-Chancellor shall preside-
 - (a) in the absence of the Chancellor and the Vice-Chancellor, at the meetings of the Court, and
 - (b) in the absence of the Vice-Chancellor, at the meetings of any other authority of the University or a committee thereof.

The Registrar.

13. The Registrar shall be a whole time salaried officer and shall act as the Secretary of the Court, of the Executive Council and of the Academic Council. He shall be appointed by the Executive Council in accordance with the Statutes made in this behalf and his emoluments and conditions of service shall be determined by such Statutes. He shall exercise such powers and perform such duties as may be prescribed by the Statutes, Ordinances and Regulations.

University Librarian and other officers.

- 14. (1) The University Librarian shall be a whole time salaried officer. He shall be appointed by the Executive Council in accordance with the Statutes made in this behalf and his qualifications, emoluments and conditions of service shall be such as may be determined by the Statutes having regard to the provisions of clause (xxix) of section 20.
- (2) The powers and duties of the University Librarian and the officers of the University referred to in clause (vii) of section 8 shall be such as may be prescribed by the Statutes, Ordinances and Regulations.

CHAPTER IV

AUTHORITIES OF THE UNIVERSITY

Authorities of the University.

- 15. The following shall be the authorities of the University, namely:-
 - (i) The Court,
 - (ii) The Executive Council,
 - (iii) The Academic Council,
 - (iv) The Faculties,
 - (v) The Boards of Studies,
 - (vi) The Finance Committee,
 - (vii) Such other Boards and bodies of the University as may be declared by the Statutes to be the authorities of the University.

The Court.

(1) The Court shall consist of the following members, namely:-

Class-I Ex-Officio Members

- (A) University Offices -
 - (i) The Chancellor,

- PART VI
- The Vice-Chancellor, (ii)
- The Ex-Vice-Chancellor of the University residing in the (iii)
- The Pro-Vice-Chancellor, if any
- The Registrar, (v)
- The University Liberian; (vi)

Others

- The Director of Higher Education or an officer not below the (i) rank of a Joint Director of Higher Education designated by the such Director;
- The Director of Technical Education or an officer not below (ii) the rank of a Joint Director of Technical Education designated by such Director;
- The Director of Health and Medical Services and Medical Education or an officer not below the rank of a Joint Director of Health and Medical Services and Medical Education designated by such Director;
- The Chairperson of the Gujarat Secondary and Higher (iv) Secondary Education Board, Gujarat State;
- The Director of Employment and Training or an officer not (v) below the rank of a Joint Director of Employment and Training designated by such Director;
- Heads of University Departments, (i)
 - Heads of recognised institutions.

Class II Ordinary Members

- Elected as specified below:-(A)
 - one member by each of the following bodies from amongst its members, namely:-
 - The Gujarat Legislative Assembly, (a)
 - Municipalities in Kachchh District; (b)
 - Kachchh District Panchayat,
 - Kachchh Chamber of Commerce,
 - one member by head masters of secondary schools situate within the (ii) University area from amongst themselves in the manner specified in the Statutes;
 - one member by secondary teachers, other than head masters, of (iii) secondary schools situate within the University area from amongst themselves in the manner specified in the Statutes;

(iv) one member other than teachers or secondary teachers or head master elected facultywise by registered graduates in each of the faculties from amongst themselves in the manner specified in the Statutes:

Provided that the number of such members shall not exceed ten and if the number of Faculties exceeds ten, the Faculties shall be suitably grouped in ten groups in the manner specified in the Statutes for the purpose of electing ten such members;

- (v) one member each by-
 - (a) the Bar Council of the State of Gujarat from amongst its members:
 - (b) the Gujarat Medical Council from amongst its members;
 - (c) the Institute of Engineers (India), Gujarat Centre, from amongst its members:

Provided that no person shall be elected to be a member of the Court by the Gujarat Medical Council if the University has no Faculty of Medicine or by the Institute of Engineers (India), Gujarat Centre, if the University has no Faculty of Engineering;

- (vi) two members by the governing bodies of colleges affiliated to the University in the manner specified in the Statutes;
- (vii) twenty members by teachers of affiliated colleges (excluding Deans of Faculties and Principals of Colleges) of whom fifteen shall be teachers having teaching experience of not less than ten years in a college or in any University established by law in the State from amongst themselves in the manner specified in the Statutes:
- (viii) such number of Principals of affiliated colleges, not exceeding fifteen as may be fixed in the proportion of one for every three principals of such colleges, from amongst themselves in the manner specified in the Statutes:
- (ix) one representative of the members of non-teaching staff of the University, affiliated colleges, recognised institutions and approved institutions to be elected in the manner specified in the Statutes:

Provided that for the purpose of election of ordinary members, a person entitled to stand as a candidate or to vote in more than one constituency shall, before such date as may be appointed by the Statutes, elect the constituency from which he desires to stand as a candidate or to vote at the election and shall not be entitled to stand or vote in more than one constituency.

- (B) Two members to be elected in the manner specified by the Statutes from amongst themselves by donors each donating money or property of the value of not less than such sum of rupees as may be specified in the Statutes;
 - (a) to, or for purposes of the University, or
 - (b) to, or for purposes of, a college or institution affiliated to or recognised by the University, irrespective of whether the donation was made before or after such affiliation or recognition:

Provided that the right of electing members on the Court shall not extend beyond the period of twenty years from the date of acceptance of such donation by the college, institution or, as the case may be, the University.

Explanation. For the purpose of this paragraph, the value of property means the market value of the property at the date of acceptance and the decision as to the market value shall rest with the Executive Council and shall be final.

- (C) (i) (a) Eight members to be nominated by the Chancellor from amongst distinguished educationists, social workers, Trade Unions, representatives of backward communities, women and such other class of persons;
 - (b) President of the Kachchh District Panchayat;
 - (c) One member each to be nominated by the municipalities in the University jurisdiction from amongst its Councilors.
 - (ii) Seventeen members to be nominated by the Vice-Chancellor, as follows, namely:-
 - (a) Five Deans of Faculties, by rotation as specified in the Statutes,
 - (b) (i) Five post-graduate students who are wholly engaged in the studies in the University;
 - (ii) Five under-graduate students who are wholly engaged in studies in affiliated colleges from the first ten students in order of their merit in the examination held immediately before their nomination;
 - (iii) two students who are wholly engaged in the undergraduate or post-graduate studies and who have achieved eminence in sports or other cultural activities organised by the University immediately before their nomination:

Provided that one of the students to be nominated under item (iii) shall be a woman.

(2) The term of office of elected members referred to in paragraphs (A) and (B) in Class II of sub-section (1) and of the nominated members referred to in clause (i) of paragraph (C) in Class-II of that sub-section shall be five years and of the members referred to in clause (ii) of that paragraph (C) shall be for one academic year:

Provided that every person elected under paragraph (A) or paragraph (B) in Class-II of sub-section (1) or nominated under sub-clause (b) of clause (i) of paragraph (C) or under clause (ii) of that paragraph in Class II of sub-section (1) shall continue to hold office of a member of the Court so long only as he is a member of the electing body or, as the case may be, bodies or is a head-master or a secondary teacher or a teacher or a principal or a member of a non-

teaching staff or a president of a district panchayat or a dean of a faculty or a student wholly engaged in studies, as the case may be.

Meeting of the Court.

- (1) The Court shall, on a date to be fixed by the Chancellor, meet once a year at a meeting to be called the annual meeting of the Court.
- (2) The Vice-Chancellor may, whenever he thinks fit, and shall, upon a requisition in writing signed by not less than one-third of the total members of the Court, convene a special meeting of the Court.

Powers and duties of the Court.

Subject to the other provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely:-

- (a) to review, from time to time, the broad policies and programmes of the University and to suggest measures for the improvement and development of the University;
- (b) to consider and pass resolutions on the annual report and the annual accounts of the University and the audit report on such accounts;
- (c) to advise the Chancellor in respect of any matter which may be referred to it for advice; and
- (d) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or the Statutes.

The Executive Council.

19.

The Executive Council shall be the executive authority of the University and shall consist of the following, namely:-

- (i) the Vice-Chancellor Ex-officio Chairperson;
- (ii) the Pro-Vice-Chancellor, if any,
- (iii) the Director of Higher Education, Gujarat State or the officer designated under clause (i) of paragraph (B) of Class-I of sub-section (1) of section 16;
- (iv) the Director of Technical Education, Gujarat State or the officer designated under clause (ii) of paragraph (B) of Class-I of sub-section (1) of section 16;
- (v) the Director of Health and Medical Services and Medical Education, Gujarat State, or the officer designated under clause (iii) of paragraph (B) of Class-I of sub-section (1) of section 16;
- (vi) two Deans of Faculties nominated by the Vice-Chancellor from amongst the Deans of Faculties by rotation in the manner prescribed by the Statutes;
- (vii) two persons to be elected by the Court from amongst its members who are not teachers or members of the teaching staff of the University affiliated colleges, recognised institutions and approved institutions and students;

- (viii) two Principals of the affiliated colleges nominated by the Vice-Chancellor by rotation in the manner prescribed by the Statutes;
- (ix) one University professor not being a Dean of a Faculty nominated by the Vice-Chancellor by rotation in the manner prescribed by the Statutes;
- one Reader nominated by the Vice-Chancellor by rotation in the manner prescribed by the Statutes;
- (xi) two persons to be nominated by the Chancellor from amongst distinguished educationists, teachers and such other class of persons irrespective of whether they are members of the Court or not.
- (2) The term of office of the elected and nominated members of the Executive Council shall be three years:

Provided that a member nominated under clauses (vi), (viii), (ix) and (x) or elected under clause (vii) of sub-section (1) shall cease to hold office as such member if he ceases to be a Dean, a Principal, a University Professor, a Reader or, as the case may be, a member of the Court.

20. (1) Subject to such conditions as may be prescribed by or under the provisions of this Act, the Executive Council shall exercise the following powers and perform the following duties, namely:-

Powers and duties of the Executive Council.

- (i) to hold, control and administer the property and funds of the University;
- (ii) to enter into, vary, carry out and cancel contracts on behalf of the University in the exercise or performance of the powers and duties assigned to it by or under this Act and the Statutes or the advice of the Finance Committee and the Legal Committee, if any appointed by the Executive Council;
- (iii) to determine the form, and provide for the custody and regulate the use, of the common seal of the University;
- (iv) to administer funds placed at the disposal of the University for specific purposes;
- (v) to pass the annual financial estimates of the University;
- (vi) after the financial estimates are voted-
 - (a) to reduce the amount of the budget grant,
 - (b) to sanction the transfer of any amount within a budget grant from one minor head to another or from a subordinate head under one minor head to a subordinate head under another minor head, or
 - (c) to sanction the transfer of any amount not exceeding five thousand rupees within a minor head from one

subordinate head to another or from one primary unit to another;

- (vii) to make provision for buildings, premises, furniture, apparatus and other means needed for carrying on the work of the University;
- (viii) to accept, on behalf of the University, bequests, donations and transfers of any movable or immovable property to the University;
- (ix) to transfer any movable or immovable property on behalf of the University;
- (x) to raise loans on the security of the assets of the University;
- (xi) to manage and regulate the finances, accounts and investments of the University;
- (xii) to institute and manage -
 - (a) Printing and Publication Department,
 - (b) University Extension Boards,
 - (c) Information Bureau,
 - (d) Employment Bureau, and
 - (e) such other institutions and organisations as may be necessary for the functioning of the University;
- (xiii) to make provision -
 - (a) for extra mural teaching and research,
 - (b) for physical education, National Cadet Corps, National Service Scheme and Military training and such other recognised activities;
- (xiv) to manage colleges, departments, institutions of research or specialised studies, laboratories, libraries, museums and hostels maintained by the University;
- (xv) to recognise hostels, to inspect such hostels and to withdraw recognition therefrom;
- (xvi) to provide housing accommodation for University teachers and other employees, to the extent the finances of the University permit;
- (xvii) to register high schools situated outside the University areas as may be provided by the Statutes;
- (xviii) to arrange for, and to direct, the inspection of affiliated colleges, recognised institutions, approved institutions and hostels, to issue instructions for maintaining their efficiency and for ensuring proper conditions of employment for members of their staff, and in case of disregard of such instruction to modify the conditions of their affiliation or recognition or take such other steps as it deems proper;

- (xix) to call for reports, returns and other information from colleges, recognised institutions, approved institutions or hostels;
- (xx) to supervise and control the residence, conduct and discipline of the students of the affiliated colleges, University Departments and recognised and approved institutions and to make arrangements for promoting their health and general welfare and to take disciplinary action against the students;
- (xxi) to institute and confer honorary degrees and academic distinctions in the manner prescribed by the Statutes;
- (xxii) to recommend to the State Government for withdrawal or reduction of a grant to a college which makes default in carrying out the conditions of affiliation;
- (xxiii) to regulate the fees to be paid by the students in affiliated colleges and recognised or approved institutions;
- (xxiv) to institute and award fellowships, travelling fellowships, scholarships, studentships, exhibitions, medals and prizes;
- (xxv) to appoint academic, administrative and other staff of the University, to fix their emoluments and define their duties and the conditions of their services and to take disciplinary action against them;
- (xxvi) to recognise a member of the staff of an affiliated college or recognised institution or approved institution as professor, reader, lecturer or teacher of the University and withdraw such recognition;
- (xxvii) to fix remuneration of examiners and to arrange for the conduct and for publishing the results of the University examinations and other tests;
- (xxviii) to fix demand and receive such fees and other charges as may be prescribed by the Ordinances ';
- (xxix) to lay down and regulate salary scales, allowances and conditions of service of officers (other than the Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor) and members of the teaching, other academic and non-teaching staff of the University;
- (XXX) to lay down and regulate salary scales, allowances and conditions of service of the members of the teaching, other academic and non-teaching staff of the affiliated colleges recognised or approved institutions;
- (xxxi) to make provision for instruction, teaching and training in such branches of learning and courses of studies as it may thing fit and for research and for the advancement and dissemination of knowledge;

- (xxxii) to make such provision as will enable affiliated colleges and recognised or approved institutions to undertake specialisation of studies;
- (xxxiii) to organise and make provision for common laboratories, libraries, museums and other requirements for teaching and research;
- (xxxiv) to establish and maintain departments and institutes of research and specialised studies;
- (xxxv) to institute professorships, readerships, lecturerships and other posts of teachers required by the University;
- (xxxvi) to institute and confer degrees, titles, diplomas and other academic or professional distinctions;
- (xxxvii) to make, amend or repeal the Statutes and Ordinances;
- (xxxviii) to elect office bearers and authorities as provided in the Ordinances and the Statutes;
- (xxxix) to make provision relating to the use of Gujarati, Hindi (in Devnagari script) and English or all the three languages as the media of instruction and examination;
- (xl) to submit to the State Government proposals for conferment of autonomy on any affiliated college or a recognised institution or a University Department or a University college entitling it to privileges in the matters of admission of students, prescribing the courses of study, imparting instructions, teaching and training in the courses of study, the holding and conduct of examinations and power to make necessary rules for the purpose;
- (xli) to recommend to the State Government withdrawal of autonomy conferred on any affiliated college, recognised institution or a University college or Department;
- (xlii) to sanction the transfer of any immovable property;
- (xliii) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act, Statutes, Ordinances and Regulations;
- (xliv) to exercise all powers of the University not otherwise provided for in this Act, or the Statutes and all other powers which are requisite to give effect to the provisions of this Act or the Statutes.
- (2) The Executive Council shall make a report of every case of acceptance of property referred to in clause (viii) of subsection (1) to the Court.
- (3) The Executive Council shall not transfer any immovable property without the previous sanction of the State Government and no transfer of immovable property which is not made with such previous sanction shall be binding on the University.

- (4) The Executive Council may by Ordinance appoint committees to carry out its administrative work and define their constitution, functions and tenure.
- (5) The exercise of the powers by the Executive Council under clauses (xxix) and (xxx) of sub-section (1) in so far as they relate to the laying down and regulating salary scales and allowances of officers (other than the Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor) and members of the teaching, other academic and non-teaching staff of the University, affiliated colleges and recognised or approved institutions, shall be subject to the approval of the State Government.
- 21. (1) The Academic Council shall be the academic body of the University and shall consist of the following persons, namely:-

The Academic Council.

- (i) The Vice-Chancellor, ex-officio Chairperson,
- (ii) The Pro-Vice-Chancellor, if any, ex-officio,
- (iii) The Deans of Faculties, ex-officio,
- (iv) The Heads of University Departments, ex-officio,
- (v) One lecturer to be nominated by the Vice-Chancellor from each faculty by rotation in the manner prescribed by the Statutes.
- (vi) One representative of Heads of recognised institutions and four Principals of affiliated colleges nominated by the Vice-Chancellor by rotation in the manner prescribed in the Statutes:

Provided that -

- (a) Where only one of the offices of the Principals of affiliated colleges is held by a woman, such woman shall be nominated as one of the four Principals, and
- (b) Where more than one offices of Principals of affiliated colleges are held by women, one out of those women shall be nominated by the Vice-Chancellor by rotation in the manner specified by the Statutes, as one of the four Principals;
- (vii) not more than fifteen Chairpersons of Boards of Studies nominated by the Vice-Chancellor by rotation in the manner specified in the Statutes.
- As soon as the Academic Council is constituted under subsection (1), it may co-opt as its additional members two eminent persons who are expert, in any of the subjects taught in the University, whether they are or are not connected with the University as its members, teachers or otherwise:

Provided that a member specified in any of the clauses (iii) to (vii) of sub-section (1) shall cease to hold office as such member if he

ceases to be a Dean of Faculty, Head of University Department, Professor, Reader, Lecturer, Head of a recognised institution, Principal of an affiliated college or, as the case may be, the Chairperson of a Board of Studies.

(3) The term of office of the members of the Academic Council other than ex-officio members shall be one year.

Powers and duties of Academic Council.

- (1) The Academic Council shall have the control and general regulation of, and be responsible for, the maintenance of the standards of teaching and examinations conducted by the University.
- (2) Without prejudice to the generally of the foregoing provisions and subject to such conditions as may be prescribed by or under the provisions of this Act, the Academic Council shall exercise the following powers and perform the following duties, namely:-
 - (i) to approve Regulations made by the Faculty concerned laying down courses of study;
 - (ii) to approve Regulations made by the faculty concerned regarding the special courses of study;
 - (iii) to arrange for co-ordination of studies and teaching in affiliated colleges, recognised institutions and approved institutions;
 - (iv) to promote research within the University;
 - (v) to approve proposals for allocating subjects to the Faculties;
 - (vi) to make proposals for the establishment of University Departments, institutes of research and specialised studies, libraries and laboratories,
 - (vii) to approve and to recommend to the Executive Council, proposals for the institution of professorships, readerships, lecturerships and any other posts of teachers required by the University and for prescribing the duties of such posts;
 - (viii) to approve and to recommend to the Executive Council proposals for the institution of fellowships, travelling fellowships, scholarships, studentships and medals and other awards and to make regulations for their award;
 - (ix) to make Regulations regarding the examinations of the University and the conditions on which students shall be admitted to them;
 - (x) to make and approve Regulations prescribing the equivalence of examinations;
 - (xi) to approve Regulations prescribing the manner of granting exemption from approved courses of study in the University or in affiliated colleges for qualifying for degrees, diplomas and certificates;

- (xii) to recommend to the Executive Council, affiliation of a college and recognition or approval of an institution;
- (xiii) to recommend to the Executive Council, the institution, conferment and grant of degrees, diplomas and certificates in the manner prescribed by the Statutes;
- (xiv) to recommend to the Executive Council, the conferment of honorary degrees and other academic distinctions, in the manner prescribed by the Statutes;
- (xv) to recommend to the Executive Council, the institution of Departments and Faculties;
- (xvi) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act, Statutes, Ordinances and Regulations; and
- (xvii) generally to advise the University on all academic matters.
- 23. (1) The University shall include the Faculties of Arts, Education, Science, Technology including Engineering, Law, Medicine, Commerce and Rural Studies and such other Faculties as may be prescribed by the Statutes. Each faculty shall comprise of such subjects as may be prescribed by the Statutes.

Faculties and their functions.

- (2) Each Faculty shall consist of -
 - (i) all Chairpersons of the Boards of Studies of the subjects comprised in the Faculty;
 - (ii) Heads of University Departments of subjects comprised in the Faculty who are not Chairpersons of the Boards of Studies.
 - (iii) one member to be nominated by the Vice-Chancellor by rotation in the manner specified by the Statutes from amongst the members of each Board of Studies for the subjects comprised in the Faculty, other than the Chairpersons and the Heads of University Departments, and
 - (iv) one person to be co-opted by the Faculty in respect of each Department in the Faculty from amongst such persons who are experts in the subjects dealt with by the Department.
- (3) (a) Where a Chairperson of the Board of Studies or a Head of University Department or a teacher, by virtue of the provisions of sub-section (2), becomes a member of more than one Faculty, he shall, within one month from the date on which he becomes a member of more than one Faculty, intimate in writing to the Registrar any one of such Faculties the membership of which he desires to retain. On receipt of such intimation by the Registrar, the person shall be deemed to have ceased to be a member of other Faculties.

- (b) If the Chairperson of the Board of Studies, the Head of University Department or the teacher, who is required under clause (a) to give intimation, fails to give such intimation, the Executive Council shall determine the Faculty of which such person shall be a member and on such determination, the person shall be deemed to have ceased to be a member of other Faculties.
- (4) The term of the office of a member of a Faculty shall be such as may be prescribed by the Statutes.

Powers and duties of the Faculty.

24.

- (1) Each Faculty shall have the general control and power of regulation of, and be responsible for, the maintenance of standards of teaching and examinations of the University for subjects comprised in it.
- (2) Without prejudice to the generality of the foregoing provisions and subject to such conditions as may be prescribed by or under the provisions of this Act, the Faculty shall exercise the following powers and perform the following duties, namely:-
 - (i) to make Regulations in consultation with the Boards of Studies concerned laying down courses of study in the Faculty;
 - (ii) to make Regulations regarding the special courses of study in the Faculty;
 - (iii) to make Regulations for the standards of passing the relevant examinations in the Faculty and for awarding classes at such examinations;
 - (iv) to make proposals for promoting research in the subjects assigned to the Faculty;
 - (v) to make proposals for allocating subjects to the Faculty;
 - (vi) to make proposals for the establishment of departments, institutions of research and specialised studies, libraries, laboratories and museums concerned with the Faculty;
 - (vii) to make proposals for the institution of professorships, readerships, lecturerships and any other posts of teachers in the Faculty and for prescribing the duties of persons occupying such posts;
 - (viii) to make proposals for the institution of fellowships, traveling fellowships, scholarships, studentships, medals, prizes and other awards and to make Regulations for their grant;
 - (ix) to make Regulations for maximum workload of teachers, the minimum teaching work for every subject and the minimum laboratory work and any other prescribed work to be done by students for any subject in the Faculty;
 - to make Regulations prescribing equivalence of examinations;

Dean of Faculties

- (xi) to make Regulations prescribing the manner for granting exemption from approved courses of study in the University or in affiliated colleges for qualifying for degrees, diplomas and certificates in the Faculty;
- (xii) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act, Statutes, Ordinances and Regulations; and
- (xiii) generally to advice the University on all academic matters pertaining to the concerned courses of studies in the Faculty.
- 25. (i) There shall be a Dean of each Faculty who shall be nominated by the Vice-Chancellor by rotation in the manner as prescribed by the Statutes from amongst persons who are Heads of University Departments and Chairpersons of Boards of Studies.
 - (2) The Dean shall hold office for a term of three years.
 - (3) The Dean shall be the principal executive authority of the Faculty, and shall exercise the following powers and perform the following duties, namely:-
 - (i) he shall be the Chairperson of the Faculty and shall preside at its meetings;
 - (ii) he may attend the meeting of any Board of Studies in the Faculty;
 - (iii) he shall supervise and co-ordinate the work of the different Boards of Studies under the Faculty;
 - (iv) he shall plan and organise seminars, refresher courses and workshops, pertaining to the subjects under the Faculty;
 - (v) he shall inspect and guide the University Departments, affiliated colleges, recognised institutions and approved institutions in respect of subjects under the Faculty; and in case where he considers it necessary to do so, also make a report of such inspection to the Vice-Chancellor;
 - (vi) he shall be responsible for the due observance of the Statutes, the Ordinances and the Regulations relating to the Faculty.
- 26. (1) There shall be a Board of Studies for every subject or group of subjects as may be prescribed by the Statutes.

Board of Studies.

- (2) Subject to the provisions of sub-section (3), each Board shall consist of the following members, namely:-
 - the Head of the University Departments in the subject or each
 of subjects with which the Board is concerned (hereinafter in
 this section referred to as "the subject");

- (ii) not more than ten persons nominated by the Vice-Chancellor by rotation in the manner prescribed by the Statutes from amongst the Principals and the teachers of affiliated colleges;
- (iii) not more than such four persons to be co-opted by the Board who are -
 - (a) experts in the subject or in subjects cognate or allied to the subject; and
 - (b) experts in the profession or industry concerned with the subject.
- (3) Each Board shall consist of atleast four members:

Provided that where the number is less than four, the Vice-Chancellor shall nominate such number of members, as may be necessary to make up the deficiency subject, however, to the condition that the total number of co-opted and nominated members shall not exceed three.

(4) The Head of the University Department shall be Chairperson of the Board:

Provided that -

- (a) where there are on the Board more than one University departments represented by its Head, the Head of such University department as may be determined by the Vice-Chancellor shall be the Chairperson of the Board;
- (b) where there is no such Head of the University department on the Board, the Chairperson shall be elected by such of its members as are qualified to teach post-graduate courses.
- (5) The term of office of the members of the Board of Studies shall be three years.
- (6) The powers and duties of a Board of Studies shall be as follows, namely:-
 - to recommend courses of studies in the subject with which the Board is concerned (hereinafter in this section referred to as "the subject");
 - to recommend and prescribe, where necessary, books for study in the subject;
 - (iii) to recommend programmes for extension services and research in the subject;
 - (iv) to recommend organisation of seminars, refresher courses and workshops to the Dean of the Faculty concerned;
 - (v) to recommend programmes for experiments and research in the courses of studies prescribed in the subject;
 - (vi) to recommend schemes for preparation and translation for books in the subject and suggest bibliography of books for study;

- (vii) to frame and propose Regulations pertaining to the courses of study and examination in the subject;
- (viii) to review periodically the terminology current in the subject;
- (ix) to exercise such other powers and duties as may be prescribed by the Statutes.
- (7) A Board of Studies shall meet at least twice during an academic term as determined by the Ordinances.
- 27. (1) There shall be a Finance Committee.

Finance Committee.

- (2) The constitution of such committee, the term of office of its members and the procedure to be followed by it shall be such as may be prescribed by the Statutes.
- (3) The Finance Committee shall perform the following functions, namely:-
 - (a) to review the expenditure incurred by the University;
 - (b) to ensure proper utilization of the money by the University according to the budget provisions;
 - (c) to review the position of financial resources of the University;
 - (d) to formulate budget programmes;
 - (e) to recommend economy in administrative expenses;
 - (f) to perform such other functions relating to accounts and audit of the revenue and expenditure of the University as may be assigned to it by the Executive Council; and
 - (g) to advise the Executive Council in financial matters whenever such advice is sought by the Executive Council.
- 28. (1) The University shall establish a Board of University Teaching and Research, a Board of Extra-Mural Studies, a Board for Hostels Management, a Planning Board, a Board for Students' Welfare and such other Boards as may be prescribed by the Statutes.

University Boards.

- (2) The constitution, powers and duties of each of the Boards established under sub-section (1) shall be such as may be prescribed by the Statutes.
- 29. The constitution, powers and duties of such other bodies as may be declared by the Statutes to be the authorities of the University shall be such as may be prescribed by the Statutes.

Constitution, powers, etc. of bodies.

CHAPTER V

STATUTES, ORDINANCES AND REGULATIONS

Statutes.

- 30. Subject to such conditions as may be prescribed by or under the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:-
 - (i) conferment of honorary degrees,
 - (ii) holding of convocations to confer degrees,
 - (iii) powers and duties of the officers of the University,
 - (iv) constitution, powers and duties of the authorities of the University, save as provided in this Act.
 - (v) institution and maintenance by the University of departments, institutes of research or specialised studies, post-graduate centres in affiliated colleges and hostels,
 - (vi) acceptance and management of bequests, donations and endowments,
 - (vii) registration of graduates and maintenance of register of registered graduates,
 - (viii) procedure at meetings of the authorities of the University and for the transaction of their business,
 - (ix) qualifications of professors, readers, lecturers and teachers in affiliated colleges and recognised institutions,
 - (x) the maximum number of students to be admitted in a college,
 - (xi) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or the Statutes,
 - (xii) suitable and adequate physical facilities such as buildings, laboratories, library, books, equipments required for teaching and research, hostels,
 - (xiii) all matters which by this Act are to be or may be prescribed by the Statutes.

Making, amendments, operation and repeal of Statutes.

- 31. (1) The Statutes may be made by the Executive Council, or may be amended, repealed or added to by the Executive Council in the manner hereinafter provided.
- (2) The Executive Council may take into consideration the draft of a Statute either of its own motion or on a proposal by any other University authority.
 - (3) Such draft shall be considered by the Executive Council at its next succeeding meeting. The Executive Council may approve such draft and pass the Statute or may reject it or return it to the concerned University authority for reconsideration either in whole or in part together with any amendment which the Executive Council may suggest. After any draft so returned has been further considered by the concerned University authority together with any amendment

suggested by the Executive Council, it shall be again presented to the Executive Council with the report of the concerned University authority thereon and the Executive Council may then deal with the draft in any manner it thinks fit.

- (4) Where a draft of a Statute seeks to provide for academic matters or matters relating to discipline of teachers or students, the Executive Council shall, before passing such Statute, consult the Academic Council.
- (5) Where a Statute affects the powers or duties of any officer, authority or Board of the University
 - the Executive Council shall, before proposing the draft of such Statute ascertain and consider the views of the officer, authority or Board concerned; and
 - (ii) the Executive Council, before passing any such Statute taken into consideration of its own motion, shall ascertain and consider the views of the officer, authority or Board concerned.
- (6) Every Statute passed by the Executive Council shall be presented to the Chancellor who may give or withhold his assent thereto or refer it back to the Executive Council for reconsideration.
- (7) No Statute passed by the Executive Council shall have validity until assented to by the Chancellor.

32. Subject to such conditions as may be prescribed by or under the provisions of this Act, the Executive Council may make Ordinances to provide for all or any of the following matters, namely:

- (i) conditions under which students shall be admitted to courses of studies for degrees, diplomas and other academic distinctions,
- (ii) conditions governing the appointment and the duties of examiners,
- (iii) conduct of examinations,
- (iv) recognition of teachers of the University,
- (v) conditions of residence, conduct and discipline of the students of the University,
- (vi) recognition of hostels,
- (vii) inspection of affiliated colleges, recognised institutions, approved institutions and hostels,
- (viii) rules to be observed and enforced by colleges and recognized institutions and approved institutions in respect of transfer of students,
- (ix) mode of execution of contracts or agreements for, or on behalf of the University,
- (x) all matters which, by this Act or the Statutes are to be or may be provided for by the Ordinances, and

Ordinances.

- (xi) generally all matters for which provision is in the opinion of the Executive Council necessary for the exercise of the powers conferred or the performances of the duties imposed upon the Executive Council by this Act or the Statutes.
- 33. (1) The Ordinances shall be made by the Executive Council:

Making of. \
Ordinances.

Provided that no Ordinance concerning the matters referred to in clauses (i) to (viii) of section 32 or any other matter connected with the maintenance of the standards of teaching and examinations within the University shall be made unless a draft of the same has been proposed by the Academic Council.

- (2) The Executive Council shall not have the power to amend any draft proposed by the Academic Council under sub-section (1) but may reject it or return it to the Academic Council for reconsideration, either in whole or in part together with any amendment which the Executive Council may suggest.
- (3) All Ordinances made by the Executive Council shall, except as provided by this Act, have effect from such date as it may direct.

Regulations and rules.

- (1) The Academic Council and subject to the approval of the Academic Council, each Faculty may make Regulations consistent with this Act, the Statutes and the Ordinances providing for all matters which by this Act, the Statutes or the Ordinances are to be provided for by Regulations and for all other matters solely concerning itself.
- Any authority of the University, specified in clauses (v) to (viii) of section 15 may, subject to the approval of the Executive Council, make rules, consistent with this Act, the Statutes, Ordinances and Regulations providing for all other matters solely concerning such authority.
- (3) All Regulations made by the Academic Council or any Faculty and all rules made by any Authority shall have effect from such date as the authority making the Regulations or rules may direct:

Provided that a Regulation or a rule which involves expenditure from the University Fund shall not be effective until it is approved by the Executive Council.

CHAPTER VI

AFFILIATION, RECOGNITION AND APPROVAL

Affiliation.

35. (1) A college applying for affiliation to the University shall send a letter of application to the Registrar, not later than 31st March of the year preceding the year in which the college is proposed to be started:

Provided that, on the recommendation of the Vice-Chancellor, the Executive Council may, if it is satisfied that there are special reasons to do so, after recording such reasons, entertain a letter of application sent to the Registrar after 31st March.

- (2) A college applying for an affiliation shall satisfy the Executive Council and the Academic Council -
 - (a) that the college will supply a need in the locality, having regard to the type of education intended to be provided by the college, the existing provisions for the same type of education made by other colleges in that locality and the suitability of the locality where the college is to be established;
 - that the college is to be under the management of regularly constituted governing body;
 - that the strength and qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision in the courses of instructions, teaching or training to be undertaken by the college;
 - (d) that there are or shall be made suitable and adequate physical facilities such as buildings, laboratories, library, books, equipments required for teaching and research, hostels, as may be prescribed in the Statute;
 - (e) that due provision is made or shall be made as far as circumstances may permit, for the accommodation of the Principal and other members of the teaching staff in or near the college or the place provided for the residence of the students;
 - (f) that the financial resources of the college are such as to make due provision for its continued maintenance and efficient working;
 - (g) that the college rules fixing the fees (if any) to be paid by the students have not been so framed as to involve such competition with any existing college in the same neighbourhood as would be injurious to the interest of the education;
 - (h) that for recruitment of the Principal and members of the teaching staff of the college, there is a selection committee of the college which shall include-
 - (i) in the case of recruitment of the Principal, a representative of the University nominated by the Vice-Chancellor, and
 - (ii) in the case of recruitment of a member of the teaching staff of the college, a representative of the University nominated by the Vice-Chancellor and the Head of the Department, if any, concerned with the subject to be taught by such members:

Provided that nothing in this clause shall apply to a Government college, a college maintained by Government or a college established and administered by minority based on religion or language;

- (i) that the college shall comply with the Statutes, Ordinances and Regulations providing for conditions of service including salary scales and allowances of the teaching and other academic and non-academic staff of an affiliated college, not being a Government college or a college maintained by the Government.
- (j) such other conditions as may be prescribed in the Statutes in accordance with the provisions of this Act.
- (3) The application shall contain an assurance that after the college is affiliated, any transference of management and all changes in the teaching staff and all other changes which result in any of the aforesaid requirement not being fulfilled or continued to be fulfilled shall be forthwith report to the Executive Council.
- (4) On receipt of a letter of application under sub-section (1), the Executive Council shall—
 - (a) direct a local inquiry to be made by a competent person or persons authorised by the Executive Council in this behalf in respect of the matters referred to in sub-section (2) and such other matters as may be deemed necessary and relevant;
 - (b) make such further inquiry as may appear to it to be necessary;
 - (c) give due consideration to the request, if any, made by the applicant for reconsideration of any of the conditions conveyed to him;
 - (d) record its opinion after consulting the Academic Council on the question whether the application should be granted or refused either in whole or in part, stating the result of any inquiry under clauses (a) and (b):

Provided that where the views of the Academic Council with regard to the affiliation of a college are not acceptable to the Executive Council, the Executive Council shall refer the matter again to the Academic Council, with or without its comments, and the Academic Council shall communicate again to the Executive Council its views with regard to the affiliation of the college.

- (5) The Registrar shall submit the application and all proceedings, if any, of the Academic Council and the Executive Council relating thereto to the State Government which shall after such inquiry as may appear to it to be necessary, grant or refuse the application or any part thereof.
- (6) Where the application or any part thereof is granted, the order of the State Government shall specify the courses of the instructions in respect of which the college is affiliated and where the application or any part thereof is refused, the grounds of such refusal shall be recorded.
- (7) As soon as possible after the State Government makes its order, the Registrar shall submit to the Executive Council and the Academic Council a full report regarding the application, the action taken

thereon under sub-sections (4) to (6) and of all proceedings connected therewith.

- (8) An application under sub-section (1) may be withdrawn at any time before an order is made under sub-section (6).
- (9) Every college, not being a college established and administered by a minority whether based on religion or language which immediately before the commencement of this Act was a ffiliated to the Gujarat University and is on such commencement affiliated to the University shall as and when occasion first arises after such commencement for recruitment of the Principal and the teachers of the college, constitute or reconstitute its selection committee in conformity with the requirements mentioned in clause (h) of sub-section (2) as if the said college had been affiliated subject to the condition in the said clause (h).

36. Where a college desires to add to the courses of instruction in respect of which it is affiliated, the procedure prescribed by section 35 shall as far as possible be followed.

Extension of affiliation.

The Executive Council shall have the power, after consultation with Academic Council, to recognise as a recognised institution any institution of research or specialised studies other than a college.

Recognition of institutions of research and specialised studies.

- (2) An institution which desires to have such recognition shall send a letter of application to the Registrar and shall give full information in the letter of application in respect of the following matters, namely:
 - (a) constitution and personnel of the managing body;
 - (b) subjects and courses in regard to which recognition is sought;
 - (c) accommodation, equipment, library facilities and the number of students for whom provision has been or is proposed to be made;
 - (d) the strength of the staff, their qualifications and salaries and the research work done by them;
 - (e) fees levied or proposed to be levied and the financial provision made for capital expenditure on buildings and equipments and for the continued maintenance and efficient working of the institution.
- (3) Before taking the application into consideration, the Executive Council may call for any further information which it may deem necessary.
- (4) If the Executive Council decides to take the application into consideration, it may direct a local inquiry to be made by a competent person or persons authorised by it in this behalf. After considering the report made as a result of such local inquiry and making such further inquiry as may appear to it to be necessary, the Executive Council shall, after obtaining the opinion of the Academic Council, grant or refuse the application or any part thereof. Where the application or

any part thereof is granted, the Executive Council shall specify the subjects and courses of instructions in respect of which the institution is recognised and make a report to that effect to the Academic Council at their next succeeding meeting. Where the application or any part thereof is refused, the grounds of such refusal shall be stated.

Approval of Institution.

38.

(1)

The Executive Council shall have the power, after consultation with the Academic Council, to approve an institution as an "approved institution" for specialised studies, laboratory work, internship, research or academic work approved by the Academic Council, under the guidance of a single qualified teacher.

- An institution which desires to have such approval shall send a letter of application to the Registrar and shall give full information in the letter of application in respect of the following matters, namely:
 - the name, qualifications, experience and research work of the (a) teacher under whom approved work is to be done;
 - the nature of work or the subjects for which work is proposed (b) . . to be done;
 - accommodation, equipment, library facilities, and the number (c) of students for whom provision has been made or is proposed
 - fees levied or proposed to be levied and the financial (d) provision made for capital expenditure on buildings and equipments and for the continued maintenance and efficient working of the institution.
 - Before taking the application into consideration, the Executive Council may call for any further information which it may deem necessary.
 - If the Executive Council decides to take the application into consideration, it may direct a local inquiry to be made by a competent person or persons authorised by it in this behalf. After considering the report made as a result of such local inquiry and making such further inquiry as may appear to it to be necessary, the Executive Council shall, after obtaining the opinion of the Academic Council, grant or refuse the application or any part thereof.

Inspection of colleges and of institutions and

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- Every affiliated college, recognised institution and approved (1)institution shall furnish such reports, returns and other information as the Executive Council after consulting the Academic Council may require to enable it to judge the which efficiency of the college or institution.
- On a direction by the Executive Council in that behalf, it shall be the the first of which duty of the Inspection Committee constituted under section 57 to inspect an affiliated college or, as the case may be, a recognised or THE MOONEYE approved institution and to make a report to the Executive Council.
- (3) The Executive Council shall cause every such college or institution to be inspected from time to time by the Inspection Committee.

Affiliated colleges,

recognised and

institutions to

comply with provisions

pertaining to

medium of

instruction.

approved

- (4) The Executive Council may call upon any college or institution so inspected to take within a specified period, such action as may appear to it to be necessary in respect of any of the matters referred to in subsection (2) of section 35 and sub-section (2) of section 37 or, as the case may be, sub-section (2) of section 38.
- 40. (1) Every affiliated college and recognised or approved institution shall, in respect of the medium of instruction, teaching, training and examination therein, comply with the provisions made in that behalf by this Act, and the Statutes, Ordinances and Regulations.
 - (2) If any affiliated college or recognised or approved institution contravenes the provisions of sub-section (1), then notwithstanding anything contained in the other provisions of this Act
 - (a) the rights conferred on such college or institution by the affiliation, recognition, or approval shall stand withdrawn from the date of such contravention; and
 - (b) such college or institution shall cease to be an affiliated college or recognised or approved institution for the purposes of this Act.
 - (3) If any affiliated college or recognised or approved institution affected by sub-section (2), raises any dispute as to the withdrawal of its rights of affiliation or recognition or approval, then such dispute shall be referred to the State Government and the State Government shall decide the dispute and its decision shall be final.
- 41. (1) The rights conferred on a college by affiliation may be withdrawn in whole or in part or modified if the college has failed to carry out any of the provisions of sub-section (2) of section 35 or the college has failed to observe any of the conditions of its affiliation or the college is conducted in a manner which is prejudicial to the interests of education.

Withdrawal of affiliation.

- (2) A motion for the withdrawal or the modification of such rights shall be initiated only in the Executive Council. The member of the Executive Council who intends to move such a motion shall give notice of it and shall state in writing the grounds on which it is made.
- (3) Before taking the said motion into consideration, the Executive Council shall send a copy of the notice and written statement mentioned in sub-section (2) to the Principal of the college concerned together with an intimation that any representation in writing submitted within a period specified in such intimation on behalf of the college will be considered by the Executive Council:

Provided that the period so specified may, if necessary, be extended by the Executive Council.

(4) On receipt of the representation or on the expiry of the period referred to in sub-section (3), the Executive Council, after considering the notice of motion, statement and representation, and after such inspection by any competent person or persons authorised by the Executive Council in this behalf, and such further inquiry as may

appear to it to be necessary and after consulting the Academic Council, shall record its opinion in the matter:

Provided that where the views of the Academic Council with regard to the withdrawal or modification of the rights conferred by affiliation are not acceptable to the Executive Council, the Executive Council shall, before passing such resolution, refer the matter again to the Academic Council, with or without its comments and the Academic Council shall communicate again to the Executive Council its views in the matter.

- (5) The Registrar shall submit the proposal and all proceedings, if any, of the Academic Council and the Executive Council relating thereto, to the State Government which, after such further inquiry, if any, as may appear to it to be necessary, shall make such order as it deems fit, and communicate the same to the Executive Council.
- (6) Where by an order made under sub-section (5), the rights conferred on any college by affiliation are withdrawn in whole or in part or modified, the grounds for such withdrawal or modification shall be stated in the order.
- (7) The Executive Council may, on recommendation of the Academic Council, recommend to the State Government withholding or reduction of a grant to an affiliated college which, on a report by an Inspection Committee or otherwise, is found making persistent default in carrying out the conditions of affiliation.

Withdrawal of recognition.

- (1) The rights conferred on an institution by recognition may be withdrawn or suspended for any period if the institution has failed to observe any of the conditions of its recognition or the institution is conducted in a manner which is prejudicial to the interest of education.
- (2) A motion for such withdrawal or suspension shall be initiated only in the Executive Council. The member of the Executive Council who intends to move such a motion shall give notice of it and shall state in writing the grounds on which it is made.
- (3) Before taking the said motion into consideration, the Executive Council shall send a copy of the notice and written statement mentioned in sub-section (2) to the head of the institution concerned, together with an intimation that any representation in writing submitted within a period specified in the intimation on behalf of the institution will be considered by the Executive Council:

Provided that the period so specified may, if necessary, be extended by the Executive Council.

(4) On receipt of the representation or on the expiry of the period referred to in sub-section (3), the Executive Council, after considering the notice of motion, statement and representation and after such inspection by any competent person or persons authorised by the Executive Council in this behalf and after such further inquiry as may

appear to it to be necessary, and after consulting the Academic Council, may by a resolution withdraw or suspend recognition.

The right conferred on an institution by approval may be withdrawn or suspended for any period by the Executive Council if the institution has failed to observe any condition of its approval or the work assigned to it is conducted in a manner which is prejudicial to the interest of education, or the teacher recognised by the University leaves the institution.

Withdrawal of approval.

- (2) Before making an order under sub-section (1) in respect of any approved institution, the Executive Council shall, by notice in writing, call upon the institution to show cause within one month from the date of the receipt of the notice by it, why such an order should not be made. The period so given for showing the cause may, if necessary, be extended by the Executive Council.
- On receipt of the explanation, if any, made by the institution in reply to the notice, and where no such reply is received, on the expiry of the period referred to in sub-section (2), the Executive Council shall, after consulting the A cademic C ouncil and a fter such inquiry, if any, as may appear to it to be necessary, decide whether the approval should be withdrawn, modified, or, as the case may be, suspended and make an order accordingly.

CHAPTER VII

AUTONOMOUS COLLEGES, AUTONOMOUS INSTITUTIONS AND AUTONOMOUS UNIVERSITY DEPARTMENTS

44. (1) Any affiliated college or University college or recognised institution or a University Department may, by a letter addressed to the Registrar, apply to the Executive Council to allow the college, institution or, as the case may be, Department to enjoy autonomy in the matters of admission of students, prescribing the courses of studies, imparting instructions and training, holding of examinations and the powers to make necessary rules for the purpose (hereinafter referred to as "the specified matters").

Conferment of autonomy on colleges, etc. in certain matters.

- 2) Either on receipt of a letter of application under sub-section (1) or where it appears to the Executive Council that the standards of education in any affiliated college or University college or recognised institution or University Department are so developed that it would be in the interest of education to allow the college, institution or department to enjoy autonomy in the specified matters, on its own motion, the Executive Council shall -
 - (a) for the purpose of satisfying itself whether the standards of education in such college, institution or department are so developed that it would be in the interest of education to allow the college, institution or department to enjoy autonomy in the specified matters -

- (i) direct a local enquiry to be made by such body of persons authorised by the Executive Council in this behalf out of whom at least one person shall be a representative of the University Grants Commission; and
- (ii) make such further inquiry as may appear to it to be necessary;
- (b) after consulting the Academic council on the question whether the college, institution or department should be allowed to enjoy autonomy in the specified matters and stating the result of the inquiry under clause (a) record its opinion on that question.
- (3) The Registrar shall thereupon submit proposals for conferring such autonomy on such college, institution or department and all proceedings, if any, of the Academic Council, and the Executive Council relating thereto, to the State Government.
- (4) On receipt of the proposals and proceedings under subsection (3), the State Government, after such inquiry as may appear to it to be necessary, may sanction the proposals or reject the proposals.
- (5) Where the State Government sanctions the proposals, it shall by an order published in the Official Gazette, confer on the college, institution or department specified in the proposals, power to regulate the admission of students to the college, institution or, as the case may be, the department, prescribing the course of studies in the college, institution or department, the imparting of instructions, teaching and training in the course of studies, the holding of examinations and such other powers as may have been specified in the proposals.
- (6) A college, recognised institution or University Department exercising the powers under sub-section (5) shall be called an autonomous college, autonomous recognised institution or, as the case may be, autonomous University Department.
- (7) In the case of an autonomous college, autonomous recognised institution or autonomous University Department, the University shall continue to exercise general supervision over such college, institution or department and to confer degrees on the students of the college, institution or department passing any examination qualifying for any degree of the University.

Standing Committee.

- 45. (1) For the purpose of enabling it to exercise the power conferred on it under section 44, an autonomous college, autonomous recognised institution or autonomous University Department shall appoint a Standing Committee consisting of such members, including the Chairperson, as may be prescribed by the Statutes.
 - (2) The Standing Committee shall exercise such of the powers of the college, institution or department under section 44, as the college, institution or department may delegate to it.

- (3) The Standing Committee may appoint a special committee or committees for the purpose of exercising such powers and performing such functions of an authority of the University other than the Court, the Executive Council and the Academic Council, in relation to the college, institution or department as the Standing Committee may, subject to such conditions as it thinks fit to impose, assign to it or them.
- 46. (1) Every autonomous college, institution or department shall furnish such reports, returns and other information as the Executive Council may require to enable it to judge the efficiency of the college, institution or department.

(2) The Executive Council shall cause every autonomous college, institution or department to be inspected from time to time by the Inspection Committee referred to in section 57 or by one or more competent persons authorised by it in this behalf.

Where in respect of an autonomous college, institution or department, the Executive Council is of opinion that the efficiency of the college, institution or department has so deteriorated that in the interest of education, it is necessary to withdraw the powers conferred on the college, institution or department under section 44, the Executive Council shall send an intimation to that effect to the Principal of the college, or head of the institution or department stating that any explanation in writing submitted within the period specified in the intimation on behalf of the college, institution or department will be considered by the Executive Council:

Provided that the period so specified may, if, necessary be extended by the Executive Council.

On receipt of the explanation or on the expiry of the period referred to in sub-section (1), the Executive Council, after considering the explanation, if any, and after such inspection by a competent person or persons authorised by the Executive Council in this behalf and such further inquiry as may appear to it to be necessary and after consulting the Academic Council, shall pass a resolution recommending the withdrawal of powers conferred under section 44:

Provided that no resolution of the Executive Council recommending the withdrawal of the powers conferred under section 44, shall be deemed to have been passed by it unless the resolution has obtained the support of two-thirds of the members present at the meeting of the Executive Council, such majority comprising not less than one half of the members of the Executive Council.

- (3) The Registrar shall submit the proposal and all proceedings, if any, of the Academic Council and the Executive Council relating thereto, to the State Government which, after such further inquiry, if any, as may appear to it to be necessary, shall make such order as it deems fit and communicate it to the Executive Council.
 - Where in the case of an autonomous college, autonomous recognised institution or autonomous University Department, the rights conferred

Autonomous college, etc. to furnish reports, et and inspection of such colleges, etc.

Withdrawal of power of autonomous college, etc. under section 44 are withdrawn by an order made under sub-section (3), the college, institution, or, as the case may be, the department shall cease to be an autonomous college, institution or department from the date specified in the order.

CHAPTER VIII

ORGANISATION WITHIN THE UNIVERSITY AREA FOR POST-GRADUATE TEACHING

Post-graduate instruction, teaching and training.

- (1) Within the University area all post-graduate instruction, teaching and training in such subjects as may be prescribed by the Statutes shall be conducted by the University or subject to the control of the University by such affiliated colleges or institutions as may be prescribed by the
 - (2) All post-graduate Departments shall ordinarily be located at the headquarters of the University. However, the University may locate any of such departments at a place or places outside its headquarters.
 - (3) The University may maintain University centres at places other than the headquarters of the University on such terms and conditions as may be prescribed by the Statutes and Ordinances.

Affiliated colleges and institutions.

- 49. The relations of the affiliated colleges, University colleges and recognised or approved institutions within the University area shall be governed by the Statutes to be made in that behalf, and such Statutes shall provide in particular for the exercise by the University of the following powers in respect of the affiliated degree colleges and recognised institutions, namely:-
 - (i) to lay down minimum educational qualifications for the different classes of teachers and tutorial staff employed by such colleges and institutions and the conditions of their service;
 - (ii) to approve the appointments of the teachers made by such colleges and institutions;
 - (iii) to require each such college and institutions to contribute a prescribed quota of recognised teachers in any subject for teaching on behalf of the University;
 - (iv) to co-ordinate and regulate the facilities provided and expenditure incurred by such colleges and institutions in regard to libraries, laboratories and other equipments for teaching and research;
 - (v) to require such colleges and institutions, when necessary, to confine the enrolment of students to certain subjects;
 - (vi) to levy contributions from such colleges and institutions and make grants to them; and
 - (vii) to require satisfactory arrangements for tutorial and similar other work in such colleges and institutions and to inspect such arrangements from time to time:

enrolment of

University.

students of the

Provided that a degree college or recognised institution shall street a convey or supplement such teaching by tutorial or other institution, teaching or training in a manner to be prescribed by the Regulations to be made by the Academic

CHAPTER IX

ENROLMENT AND DEGREES

- No student shall be enrolled as a student of the University unless he has. Qualifications for 50.
 - the Higher Secondary School Certificate Examination conducted by the Gujarat Secondary and Higher Secondary Education Board in such subjects and with such standards of attainment as may be prescribed by the Statutes, or
 - the entrance examination, if any, which may be instituted by the (ii) University with the consent of the State Government and held in such subjects and in such manner as may be prescribed by the Statutes, or
 - any other examination prescribed as equivalent to the examinations referred to in clauses (i) and (ii),

and possess such further qualifications, if any, as may be prescribed by the Statutes:

Provided that a student who has passed the Secondary School Certificate Examination in the tenth standard conducted by the Gujarat Secondary and Higher Secondary Education Board in such subjects and with such standards of attainment as may be prescribed by the Statutes or any other examination prescribed as equivalent to the aforesaid examination may be enrolled as a student of the University for the purpose of such diploma courses as may be prescribed by the Statutes.

Explanation.- In this section, "Higher Secondary School Certificate Examination" means the examination of the students in the twelfth standard.

Every student of the University shall reside under such conditions as 51. may be prescribed by the Ordinances.

Residence of students.

- The University shall, as far as may be, provide to the students of the (2) University residential accommodation in hostels of the University in accordance with the provisions made by the Ordinances.
- The Executive Council may, on the recommendation of the Academic Council, institute and confer such degrees, diplomas and other academic distinctions as may be prescribed by the Statutes.
- If, on the recommendation of the Academic Council, not less than two-thirds of the members of the Executive Council recommended that an honorary degree, or other academic distinction be conferred on any person on the ground that he is, in their opinion, by reason of eminent position and attainments a fit and proper person to receive such degree or other academic distinction and when their recommendation is supported by a majority of not less than two-thirds of the members of the Court

Degrees, diplomas and other academic distinctions.

Honorary degree

present at a meeting of the Court, such majority comprising not less than one half of the members of the Court and the recommendation is confirmed by the Chancellor, the Executive Council may confer on such person the honorary degree or other academic distinction so recommended without requiring him to undergo any examination.

Removal from membership of University and withdrawal of degree or diploma: 54.

(1)

- The Chancellor may, on the recommendation of the Executive Council and of the Court supported by a majority of not less than two-thirds of the members of each body present at its meeting, such majority comprising not less than one half of the members of each body, remove the name of any person from the register of graduates or withdraw from any person a diploma or degree if he has been convicted by a court of law of any offence which in the opinion of the Executive Council and the court is a serious offence involving moral turpitude or if he has been guilty of scandalous conduct.
- (2) No action under this section shall be taken unless the person concerned is given an opportunity to be heard in his defence in the manner prescribed by the Statutes.

CHAPTER X

COMMITTEES

Committee for selection of University teachers.

- 55. (1) There shall be committees for selection of different classes of full-time teachers of the University including tutors and demonstrators.
 - (2) No person shall be appointed as full time teacher of the University except on the recommendation of the committee.
- (3) The constitutions of such committee, the term of office of its members and the procedure to be followed by it shall be such as may be prescribed by the Statutes.

Examiners' Committee.

- 56. (1) There shall be formed every year a committee for each faculty, for the purpose of drawing up the list for appointments to University examinership, consisting of -
 - (i) the Pro-Vice-Chancellor, Ex-officio Chairperson,
 - (ii) the Dean of the concerned Faculty,
 - (iii) the Chairperson of the Board of Studies, and
 - (iv) two members of the Board of studies nominated by the Vice-Chancellor for the year.
 - (2) The list of examiners prepared by the committee shall be placed through the Academic Council before the Vice-Chancellor for his approval who may either approve or modify the same for the reasons to be recorded in writing.
 - (3) The procedure to be followed by the committee shall be such as may be prescribed by the Statutes.

Inspection Committee.

57. There shall be an inspection Committee consisting of the Pro-Vice-Chancellor or any other person nominated by the Vice-Chancellor as the Chairperson and such

other members as may be appointed by the Executive Council in accordance with the Statutes.

- 58. (1) There shall be a College Development Committee for the purpose of development of colleges in the University area.
 - (2) The constitution of such committee, the term of office of its members and the procedure to be followed by it shall be such as may be prescribed by the Statutes.
- 59. (1) There shall be constituted as many joint consultative committees as for the purpose of promoting welfare of members of non-teaching staff of the University, affiliated colleges and recognised institutions as may be deemed necessary by the University.
 - (2) The constitution of every such committee, the term of office of its members and its powers and functions shall be such as may be prescribed by the Statutes.
- 60. (1) There shall be a Library Committee for administering, organising and maintaining the libraries and library services of the University.
 - (2) There shall be Purchase Committee for dealing with all matters pertaining to all purchases of the University in respect of such items where individual cost of each item exceeds rupees one lakh at a time.
 - (3) The constitution of every such committee, the term of office of its members and its powers and functions shall be such as may be prescribed by the Statutes.
- 61. (1) Any of the authorities of the University referred to in section 15 may from time to time appoint such other committees consisting of such persons from amongst its members as the authority thinks fit and may refer or entrust, to any such committee for inquiry and report or for opinion any of the matters dealt with by the authority and may at any time discontinue or alter the constitution of any such committee.
 - (2) Notwithstanding anything contained in this Act, but subject to the approval of the appointing authority, it shall be lawful for a committee appointed under sub-section (1) to co-opt such number of persons who are not members of the appointing authority as its members as it thinks fit.

CHAPTER XI

FINANCE

- 62. (1) The University shall establish a fund to be called the University Fund.
 - (2) The following shall form part of, or be paid into, the University Fund
 - (a) any contribution or grant by the State Government, the Union Government, or the University Grants Commission;
 - (b) The income of the University from all sources including income from fees and charges;
 - (c) bequests, donations, endowments and other grants, if any;

College Development Committee.

Joint Consultative Committee.

Library and Purchase Committee.

Other Committees.

University Fund.

- any sum borrowed from the banks with the permission of the State Government;
- The University Fund shall be kept in any Scheduled Bank as defined (3) in the Reserve Bank of India Act, 1934, or in a Co-operative Bank approved II of 1934. by the State Government for the purpose or invested in securities authorised by the Indian Trust Act, 1882, at the discretion of the Executive Council.

2 of 1882.

Annual accounts and financial estimates.

63.

- The annual accounts of the University shall be prepared under the direction of the Executive Council and shall be submitted to the State Government for audit.
 - The Executive Council shall, after the accounts are audited, submit a copy thereof alongwith a copy of the audit report to the Court and to the State Government.
- The Executive Council shall, having regard to the Government grants that are likely to be available, prepare before such date as may be prescribed by the Statutes, the financial estimates for the ensuing year.
- The annual accounts shall be considered by the Court at its annual meeting and the Court may pass resolutions with reference thereto and communicate the same to the Executive Council which shall take them into consideration and take such action thereon as it thinks fit, and finally adopt the accounts. The Executive Council shall inform the Court at its next meeting of the action taken by it or if no action is taken, the reasons for taking no action.

Annual report.

The annual report of the University shall be prepared under the direction of the Executive Council and shall be submitted to the Court on or before such date as may be prescribed by the Statutes and shall be considered by the Court at the annual meeting. The Count may pass resolutions thereon and communicate the same to the Executive Council which may take such action as it thinks fit, and the Executive Council shall inform the Court at its next meeting of the action taken by it or if no action is taken, the reasons for taking no action.

CHAPTER XII

SUPPLEMENTARY PROVISIONS

Conditions of

Save as otherwise provided by or under this Act, every salaried officer and. teacher of the University shall be appointed under a written contract. The contract shall be lodged with the Registrar of the University and a copy thereof shall be furnished to the officer or teacher concerned.

Reservation of posts in favour of Scheduled Castes, etc.

In the matter of appointment of persons in the service of the University, the University shall follow the provisions made by the State Government from time to time for the reservation of appointments and posts in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes in the services under the State Government.

45 of 1860.

67. Every officer and employee of the University shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Officers and employees to be public servant.

Explanation.—For the purpose of this section, any person who is appointed by the University for a specified period or for a specified work of the University, or who receives any remuneration by way of compensatory allowance or fee for any work done from the University Fund shall be deemed to be an officer or employee of the University while he is performing, and in relation to all matters relatable to the performance of the duties and functions connected with such appointment or work.

68. (1) No member of the teaching and other academic and non-teaching staff of a recognised or approved institution shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and until -

Dismissal, removal, reduction and termination of service of staff, etc.

- (a) he has been given a reasonable opportunity of making representation on any such penalty proposed to be inflicted on him, and
- (b) the penalty to be inflicted on him is approved by the Vice-Chancellor or any other officer of the University authorised by the Vice-Chancellor in this behalf.
- (2) No termination of service of such member not amounting to his dismissal or removal falling under sub-section (1) shall be valid unless-
 - (a) he has been given a reasonable opportunity of showing cause against the proposed termination; and
 - (b) such termination is approved by the Vice-Chancellor or any officer of the University authorised by the Vice-Chancellor in this behalf:

Provided that nothing in this sub-section shall apply to any person who is appointed for purely temporary period only.

69. Any dispute arising out of a contract between the University and any officer or teacher of the University shall, on the request of the officer or teacher concerned, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned and an Umpire appointed by the Chancellor. The decision of the Tribunal shall be final and no suit shall lie in any civil court in respect of the matter decided by the Tribunal. Every such request shall be deemed to be submission to arbitration upon the terms of this section within the meaning of the Arbitration and Conciliation Act, 1996, and the provisions of that Act shall apply accordingly.

Tribunal of Arbitration.

26 of 1996.

70. (1) Any dispute between the governing body and any member of the teaching, other academic and non-teaching staff of recognised or approved institution which is connected with the conditions of service of such member, shall, on a request of the governing body or of the member concerned be referred to a Tribunal of Arbitration consisting of one member nominated by the governing body of the recognized or approved institution, one member nominated by the member concerned and an Umpire appointed by the Vice-Chancellor.

Reference of dispute between recongised or approved institution and its staff member to Tribunal 2 of Arbitration. (2) The provisions of section 69 shall there upon mutatis mutandis apply to such request and the decision that may be given by such Tribunal.

Pension, insurance and provident fund. 71. The University shall make provisions for the benefit of its officers, teachers and other servants in such matters as insurance, pension, provident fund or other benefits as it may deem fit, in such manner and subject to such conditions as may be prescribed by the Statutes.

Pension, insurance, provident fund of staff of colleges, etc.

- 72. (1) The governing body of any affiliated college and of a recognised institution shall make adequate provisions for the benefit of the members of the teaching and of other academic and non-teaching staff of such college or institution in matters of insurance, pension and provident fund or for other benefits.
 - (2) The subscription of a member of a teaching staff and of other academic and non-teaching staff of an affiliated college or of a recognised institution towards his provident fund and the contribution, if any, of the college or, as the case may be, of the institution towards the fund shall be deposited in such manner and within such time as may be prescribed by the Statutes, in a Scheduled Bank as defined in the Reserve Bank of India Act, 1934, or in a Co-operative Bank as defined in the Gujarat Co-operative Societies Act, 1961, approved by the State Government for such purpose.

II of 1934. Guj. X of 1962.

Provident Fund to be deposited in Government treasury.

- (1) Where the University has established a provident fund for the benefit of its officers, teachers and other servants under section 71 such fund shall, notwithstanding anything contained in any law for the time being in force, be deposited in the State Government treasury in accordance with such direction as the State Government may, from time to time, by an order in writing give, and thereupon -
 - (i) the subscriber to the fund shall be entitled to interest on the balance in his provident fund account at the same rate at which the State Government servant is for the time being entitled to on the balance in his provident fund account, and
 - (ii) the rules for the time being in force relating to the limits of withdrawals from the provident fund as applicable to such Government servant shall, so far as may be, apply to the subscriber.

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(2) Nothing in this section shall apply to a Provident Fund established by the University to which the Employee's Provident Funds and Miscellaneous Provisions Act, 1952 applies.

X of 1952.

Election to be by system of proportional representation. 74. Every election to any authority of the University made under this Act shall be made according to the system of proportional representation by means of a single transferable vote by ballot in such manner as may be prescribed by the Statutes.

Vacating of office.

75. (1) Any member of any authority or body of the University may resign his office by letter addressed the Vice-Chancellor through the Registrar and the resignation shall take effect on its acceptance by the Vice-Chancellor or on the expiry of thirty days from the date of receipt of the letter by the Vice-Chancellor whichever event occurs earlier.

Any member of any authority or body of the University shall cease to be a member on his being convicted by a court of law of an offence which, in the opinion of the Executive Council, involves moral turpitude.

When any vacancy occurs in the office of a member (other than an ex-officio member) of any authority or other body of the University before the expiry of the term of office of such member, the vacancy shall be filled up, as soon as conveniently may be, by the election, nomination, appointment or co-option, as the case may be, of a member who shall hold office so long only as the member in whose place he has been elected, nominated, appointed or co-opted, would have held it, if the vacancy had not occurred:

Filling up of casual vacancies.

Provided that, if the vacancy be of an elected member of the Court and occurs within six months preceding the date on which the term of office of such member expires, the vacancy shall not be filled.

No act or proceeding of any authority or other body of the University shall be Proceeding not 77. invalidated merely by reason of any vacancy in its membership.

invalidated by vacancies.

Disputes as to

constitution of

authority or body.

University

- Where any question arises as to -78.
 - the interpretation of any provision of this Act, or of any Statute, (1)Ordinance, Regulation or rule, or
 - whether a person has been duly elected or appointed as, or is entitled to be or ceases to be entitled to be, a member of any authority or other body of the University
 - it may be referred to the State Government if it relates to a matter specified in clause (1), and
 - it shall be referred to the State Government if -**(b)**
 - it relates to a matter specified in clause (2), or (i)
 - if twenty members of the Court so require, irrespective (ii) of whether it relates to a matter specified in clause (1) or clause (2); and

the State Government shall after making such inquiry as it deems fit (including giving an opportunity of being heard where necessary) decide the question and its decision shall be final.

All acts and orders in good faith done and passed by the University or any of its authorities, bodies or officers shall be final and no suit shall be instituted against or damage or compensation claimed from, the University or its authorities, bodies or officers for anything purporting to be done in pursuance of this Act and the Statutes, Ordinances, Regulations and Rules framed thereunder.

Protection of acts and orders.

Nothing contained in sections 65, 68, 70 and 72 shall apply to a college or institution owned or maintained by the Government.

Non-application of sections 65, 68, 70 and 72 to Government college.

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TRANSITORY PROVISIONS

Terms and conditions of employees of affiliated colleges who wereholding the posts in affiliated colleges of Gujarat University.

Notwithstanding anything contained in this Act, every employee of a college affiliated to this University who is holding office (whether teaching or non-teaching) of Gujarat University immediately before the commencement of this Act shall continue to hold office on the same terms and conditions as were applicable to him immediately before such date, and exercise such powers and perform such duties as are conferred on them by or under this Act.

Completion of courses of students in colleges affiliated to Gujarat University.

82. Notwithstanding anything contained in this Act or the Statutes, Ordinances and Regulations made thereunder, any student of a college affiliated to this University who, immediately before the date on which section 5 comes into force was studying or was eligible for any examination of the Gujarat University, shall be permitted to complete his course in preparation therefore, and the University shall provide for such period and in such manner as may be prescribed by the Statutes for the instruction, teaching, training and examination of such students in accordance with the courses of studies of the Gujarat University.

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Appointment of first Vice-Chancellor. 83. Notwithstanding anything contained in section 10, the first Vice-Chancellor shall be appointed by the State Government as soon as practicable after the commencement of this Act for a period not exceeding three years and on such terms and conditions as the State Government thinks fit.

Appointment of Pro-Vice-Chancellor. 84. Where as soon as practicable after the commencement of this Act, the State Government decides to fill the office of the Pro-Vice-Chancellor, it shall, notwithstanding anything contained in section 12; appoint the first Pro-Vice-Chancellor for the period for which the first Vice-Chancellor is appointed under section 83 and on such terms and conditions as the State Government thinks fit.

Appointment of first Registrar.

85. Notwithstanding anything contained in section 13, the first Registrar shall be appointed by the State Government as soon as practicable after the commencement of this Act for a period of not exceeding three years and on such terms and conditions as the State Government thinks fit.

Transitory
powers of first
Vice
Chancellor.

C. 198 (200)

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86. (1) It shall be the duty of the first Vice-Chancellor -

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- (a) to give recognition to institutions, if any, as far as possible consistent with the provisions of section 37; and
- (b) to make arrangements for constituting the Court, the Executive Council, the Academic Council and other authorities of the University within six months after the date of his appointment or such longer period not exceeding one year as the State Government may, by notification in the Official Gazette, direct.

- (2) The first Vice-Chancellor shall, with the assistance of the Advisory Committee consisting of not more than fifteen members nominated by the State Government,
 - subject to the provisions of this Act, and the approval of the Chancellor
 - make provisional Statutes necessary for constituting the aforesaid authorities and regulating the procedure at their meetings and the transaction of their business,
 - draw up rules, that may be necessary for regulating the method of elections to the aforesaid authorities,
 - frame the first Statutes, Ordinances and Regulations under this Act and submit them for confirmation to the respective authorities when they commence to exercise their functions.
- The authorities constituted under sub-section (1) shall commence to exercise their functions on such date or dates as the State Government (3) may, by notification in the Official Gazette, direct.
- The Statutes, Ordinances and Regulations framed by the first Vice-Chancellor shall, when confirmed by the respective authorities, be published in the Official Gazette.
- At any time after the commencement of this Act, until such time as the authorities of the University shall commence to exercise their functions -
- First appointment of the officers of the University.
- any officer of the University may be appointed by the Vice-Chancellor with the previous sanction of the Chancellor, (a)
- till the Executive Council is constituted, the teachers of the University may be appointed by the Advisory Committee (b) referred to in sub-section (2) of section 86 with the approval of the Chancellor on the recommendation of the Selection Committee consisting of the following persons, namely:
 - the Vice-Chancellor, (i)
 - a nominee of the Chancellor, (ii)
 - three experts to be appointed out of a panel of (iii) experts drawn by the Advisory Committee.
- (2) Any appointment made under sub-section (1) shall be for such period not exceeding three years and on such terms and conditions as the appointing authority thinks fit:

Provided that no such appointment shall be made until financial provision has been made therefor.

The first Vice-Chancellor appointed under section 83 shall have powers until the Executive Council commences to exercise its functions -

Extra-ordinary powers of the first Vice-Chancellor.

[PART V

- (a) with the previous approval of the Chancellor, to make additional Statutes to provide for any matter not provided for by the first Statutes;
- (b) to constitute provisional authorities and bodies and on their recommendations to make rules providing for the conduct of the work of the University;
- subject to the control of the State Government, to make such financial arrangements as may be necessary to enable this Act, or any part thereof, to be brought into force;
- (d) with the sanction of the Chancellor, to make for a period not exceeding three years, such appointments as may be necessary to enable this Act or any part thereof, to be brought into force;
- (e) to appoint any committee as he may thinks fit, to discharge such of its functions as he may direct; and
- (f) generally to exercise all or any of the powers conferred on the Executive Council by or under the provisions of this Act.

Power to remove difficulties.

89. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by an order published in the *Official Gazette*, make such provisions not inconsistent with the provisions of this Act, as appear to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

Amendment of Bom. L of 1949.

90. In the Gujarat University Act, 1949, in Schedule I, the entry at serial number 8 shall be deleted.

Bom. L of 1949.

SCHEDULE (See section 2 (18))

Kachchh District.

STATEMENT OF OBJECTS AND REASONS

There is long standing demand of the people of the Kachchh district for a separate University. The area of Kachchh district is conside—rably—far—from Ahmedabad, which is head-quarter of the Gujarat University. After the devastating earthquake in Kachchh and disturbances in Ahmedabad, students of Kachchh district faced much difficulty in persuing their study and approaching Gujarat University at Ahmedabad for various examinations, admissions and imparting educational instructions especially for post-graduate courses. For the overall balance development of Kachchh district, the providing facility of University is one of the major step forward in this direction. It is considered that such an important facility should immediately be provided to the Kachchh district to meet with their hardships and longstanding and persistent demand from the students, public and educationists. The Bill a ccordingly provides for the establishment of a University to be known as the Kachchh University with the jurisdiction of Kachchh district to cater to the needs of this region.

This Bill seeks to achieve the aforesaid objects.

- 2. The following notes on clauses explain, in brief, the important provisions of the Bill:-
- Chapter I.- This Chapter contains clauses 1 and 2 providing for short title, commencement and definitions.
- Chapter II. This Chapter contains clauses 3 to 7 which relate to incorporation, powers, jurisdiction, etc. of the University. Clause 5 specifically provides that the colleges affiliated to the Gujarat University which would now come within the University area of the Kachchh University would automatically become affiliated to the Kachchh University and their affiliation with the Gujarat University shall cease.
- Chapter III. This Chapter contains clauses 8 to 14 relating to officers of the University particularly Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Registrar and Librarian and their powers, duties and functions.
- Chapter IV. This Chapter contains clauses 15 to 29 which relate to the constitution of different authorities of the University, particularly the Court, Executive Council, Academic Council, Faculties, Boards of Studies and Finance Committee and their powers, duties and functions.
- Chapter V.- This Chapter contains clauses 30 to 34 relating to the making of Statutes and Ordinances by the Executive Council, Regulations by the Academic Council and each Faculty and Rules by certain authorities.
- Chapter VI. This Chapter contains clauses 35 to 43 relating to grant of and withdrawal of affiliation of colleges and recognition of institutions of research and specialised studies, approval of institutions and medium of instruction.
- Chapter VII This Chapter contains clauses 44 to 47 relating to conferment and withdrawal of autonomy to colleges, institutions and University Departments and appointment of a Standing Committee.

Chapter VIII. - This Chapter contains clauses 48 and 49 relating to organisation of post-graduate teaching within University area.

Chapter IX. This Chapter contains clauses 50 to 54 relating to qualifications required for enrolment of students as students of the University, and conferment and withdrawal of degrees, diplomas, honorary degrees and other academic distinctions.

Chapter X.— This Chapter contains clauses 55 to 61 relating to appointment of Examiners' Committee, Inspection Committee, College Development Committee, Joint Consultative Committee and Library and Purchase Committee of the University.

Chapter XI. - This Chapter contains clauses 62 to 64 relating to University Fund, annual accounts and financial estimates and annual report of the University.

Chapter XII.- This Chapter contains clauses 65 to 80 relating to certain supplementary provisions. Clauses 65 to 68 contains provisions in regard to conditions of service under the University and the rights, duties and other matters concerning the officers, teachers and other employees of the University. Clauses 69 and 70 relate to Tribunal of Arbitration. Clauses 71 to 73 relate to the provision of pension, insurance and Provident Fund. Clauses 74 provides for procedure of election by system of proportional representation. Clauses 75 and 76 relate to vacating of office by officers of the University and the filling of vacancies in their offices. Clause 78 provides for reference of disputes as to the constitution of the University authority or body to the State Government and finality of the decision of the State Government. Clauses 79 and 80 relate to the provision of protection of acts and non-application of certain clauses to Government colleges.

Chapter XIII. This Chapter contains clauses 81 to 90 relating to transitory provisions. Clauses 83 to 86 relate to appointment of first Vice-Chancellor, Pro-Vice-Chancellor and the Registrar and for the transitory powers of the first Vice-Chancellor. Clause 87 provides for the first appointment of the officers of the University. Clause 88 provides for extra-ordinary powers of the first Vice-Chancellor. Clause 89 provides for the power of the State Government to remove difficulties and clause 90 seeks to amend the Schedule to the Gujarat University Act, 1949.

ANANDIBEN PATEL

FINANCIAL MEMORANDUM

Sub-clause (2)(a) of clause 62 of the Bill contemplates payment of contribution or the grant to the University among others by the State Government. This provision, if enacted, and brought into operation, would involve an estimated annual recurring expenditure of rupees 1.10 crores from the Consolidated Fund of the State towards the grants to be made to the University.

ANANDIBEN PATEL

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers of in the following respects, namely:-

- Clause I.— Sub-clause (2) of this clause empowers the State Government to appoint by notification in the Official Gazette, the date on which other provisions shall come into force and also to appoint different dates for different provisions.
- Clause 4.- (i) This clause empowers the concerned authority of the University to prescribe conditions subject to which the University shall have the powers specified in that clause;
- (ii) sub-clause (15) of this clause empowers the concerned authority of the University to prescribe by Statutes, Ordinances, Regulations and rules, the manner in which approved courses of study are to be pursued, the examinations and tests to be passed, and conditions under which research is to be carried on, by persons on whom the University may confer degrees and diplomas and to whom it may grant certificate;
- (iii) sub-clause (16) empowers the Executive Council to prescribe by Statutes the manner in which honorary degrees or other academic distinctions are to be conferred by the University;
- (iv) sub-clause (17) empowers the concerned authority of the University to determine by Statutes, Ordinances, Regulations and Rules, diplomas to be granted and lectures, instruction and training to be provided, to persons who are not enrolled students of the University;
- (v) sub-clause (18) empowers the Executive Council to prescribe by Statutes, the manner in which the University may withdraw or cancel any degree, diploma or certificate conferred or granted by the University;
- (vi) sub-clause (31) empowers the Executive Council to prescribe by Ordinances, the fees and other charges to be fixed, demanded, received or recovered by the University.

- Clause 8.- This clause empowers the Executive Council to declare by Statutes other officers in the service of University to be the officers of the University.
- Clause 9.- This clause empowers the Executive Council to confer by Statutes other powers on the Chancellor.
- Clause 10.- (i) Sub-clause (2)(a)(ii) of this clause empowers the Executive Council to prescribe by Statutes, the manner in which the Executive Council and the Academic Council shall jointly nominate one person on the Search Committee and the manner in which the Vice-Chancellors of all Universities in the State of Gujarat shall nominate another person on the said Committee;
- (ii) sub-clause (3) of this clause empowers the Executive Council to prescribe by Statutes the time within which and the manner in which the Committee shall select three persons whom it considers fit for being appointed as Vice-Chancellor and other particulars which the Committee shall recommend to the Chancellor;
- (iii) sub-clause (5) of this clause and sub-clause (3) of clause 12 empowers the State Government to determine, the emoluments to be paid to the Vice-Chancellor and the Pro-Vice-Chancellor and the terms and conditions subject to which he shall hold office.
- Clause 13.— This clause empowers the Executive Council to prescribe by Statutes, the emoluments and conditions of service on which the Registrar shall be appointed. It also empowers the concerned authority to prescribe by Statutes, Ordinances and Regulations, the powers subject to which the Registrar shall exercise such powers and perform such duties.
- Clause 14.- (i) Sub-clause (1) of this clause empowers the Executive Council to prescribe by Statutes the qualifications, emoluments and conditions of service on which the Librarian shall be appointed;
- (ii) sub-clause (2) of this clause empowers the concerned authority to prescribe by Statutes, Ordinances and Regulations, the powers and duties of the Librarian and other Officers of the University.
- Clause 15.- Item (vii) of this clause empowers the Executive Council to declare by Statutes, other Boards and bodies of the University to be the authorities of the University.
- Clause 16.— This clause empowers the Executive Council to specify by Statutes, the manner in which the members referred to in items (ii), (iii), (iv), (vi), (vii) and (ix) of paragraph (A) falling under Class II Ordinary Members and the members referred to in paragraph (B) shall be elected to the Court, and the manner in which the Faculties shall be suitably grouped in ten groups for the purpose of electing ten members under item (iv) of paragraph (A) falling under Class II Ordinary Members, if the member of Faculties exceed ten.

- Clause 18.- Sub-clause (d) of this clause empowers the Executive Council to confer other powers and impose other duties on the Court by the Statutes.
- Clause 19.— Items (vi), (viii), (ix) and (x) of sub-clause (1) of this clause empowers the Executive Council to prescribe by Statutes, the manner of rotation in which persons referred to in the said items shall be nominated by the Vice-Chancellor.
- Clause 20.- (i) This clause empowers the concerned authority to prescribe conditions subject to which the Executive Council shall exercise the powers and perform the duties specified in that clause;
- (ii) item (xvii) of sub-clause (1) empowers the Executive Council to provide by Statutes, the registration of high schools situated outside the University area;
- (iii) item (xxi) of sub-clause (1) empowers the Executive Council to prescribe by Statutes, the manner of institution and conferment of honorary degrees and academic distinctions:
- (iv) item (xxviii) of sub-clause (1) empowers the Executive Council to prescribe by Ordinances, the fees and other charges to be fixed, demanded and received;
- (v) item (xxxvii) of sub-clause (1) empowers the Executive Council to make, amend or repeal the Statutes and Ordinances;
- (vi) item (xxxviii) of sub-clause (1) empowers the Executive Council to provide by Ordinances and Statutes, the election of office bearers and authorities;
- (vii) item (xliii) of sub-clause (1) empowers the concerned authority to prescribe by Statutes, Ordinances and Regulations, the other powers which may be exercised and the other duties which may be performed by the Executive Council.
- Clause 21.— Items (v), (vi) and (vii) of sub-clause (1) of this clause empowers the Executive Council to prescribe by Statutes, the manner of rotation in which persons referred to in the said items shall be nominated by the Vice-Chancellor.
- Clause 22.- (i) Item (viii) of sub-clause (2) empowers the Academic Council to make regulations for award, fellowships, etc;
- (ii) items (ix) and (x) of sub-clause (2) empowers the Academic Council to make regulations regarding the examinations of the University, the conditions on which students shall be admitted to them and the equivalence of examinations;
- (iii) item (xvi) empowers the concerned University authority to prescribe by Statutes, Ordinances and Regulations, the other powers which may be exercised and the other duties which may be performed by the Academic Council.
- Clause 23.- (i) Sub-clause (1) of this clause empowers the Executive Council to prescribe by Statutes, the other faculties and the subjects which each faculty shall comprise;

- (ii) item (iii) of sub-clause (2) of this clause empowers the Executive Council to specify the manner in which one member shall be nominated by rotation by the Vice-Chancellor:
- (iii) sub-clause (4) empowers the Executive Council to prescribe by Statutes, the term of the office of a member of each Faculty.
- Clause 24.- (i) Items (i), (ii), (iii), (ix), (x) and (xi) of sub-clause (2) of this clause empowers the Faculty to make regulations in respect of the matters specified in those items:
- (ii) item (viii) of sub-clause (2) empowers the Faculty to make regulations for grant of fellowships, scholarships, medals, prizes and other awards;
- (iii) item (xii) of sub-clause (2) empowers the concerned authority of the University to prescribe by the Statutes, Ordinances and Regulations, the other powers which may be exercised and the other duties which may be performed by the Faculty.
- Clause 25.- Sub-clause (1) of this clause empowers the Executive Council to prescribe by the Statutes, the manner of rotation in which a Dean of Faculty shall be nominated by the Vice-Chancellor.
- Clause 26.- (i) Sub-clause (1) of this clause empowers the Executive Council to prescribe by Statutes, the subjects or group of subjects for which there shall be a Board of Studies;
- (ii) item (ii) of sub-clause (2) empowers the Executive Council to prescribe by Statutes the manner of rotation in which the persons mentioned therein shall be nominated by the Vice-Chancellor;
- (iii) item (ix) of sub-clause (6) of this clause empowers the Executive Council to prescribe the other powers which may be exercised and other duties which may be performed by the Board of Studies.
- Clause 27.- This clause empowers the Executive Council to prescribe by Statutes, the constitution of the Finance Committee, the term of office of its members and the procedure to be followed by the Committee.
- Clause 28.— (i) sub-clause (1) empowers the Executive Council to prescribe by Statutes, the other Boards which may be established by the University;
- (ii) sub-clause (2) of this clause empowers the Executive Council to prescribe by Statutes, the constitution, powers and duties of each of the Boards established under sub-clause (1).
- Clause 29.— This clause empowers the Executive Council to prescribe by Statutes, the constitution, powers and duties of such other bodies as are declared by the Statutes to be the authorities of the University.

- Clause 30. This clause empowers the Executive Council to prescribe by Statutes, for the matters mentioned in this clause.
- Clause 31.- This clause empowers the Executive Council to make the Statutes for the matters specified in clause 30 and also empowers to amend, repeal or add to those Statutes.
- Clause 32.— This clause empowers the Executive Council to make Ordinances to provide for all or any of the matter specified therein.
- Clause 34.- (i) Sub-clause (1) of this clause empowers the Academic Council and each Faculty to make Regulations in respect of all matters for which Regulations are to be made and also other matter concerning itself;
- (ii) sub-clause (2) of this clause empowers any authority of the University specified in items (v) to (vii) of clause 15 to make rules consistent with the Act, the Statutes, the Ordinances and Regulations providing for all matters solely concerning such authority.
- Clause 35.- Item (j) of sub-clause (2) of this clause empowers the Executive Council to specify by Statutes, the other conditions in relation to affiliation.
- Clause 45.- Sub-clause (1) of this clause empowers the Executive Council to prescribe by Statutes, the members of the Standing Committee.
- Clause 48.- (i) Sub-clause (1) of this clause empowers the Executive Council to prescribe by Statutes, the subjects in which the post-graduate instruction, teaching and training shall be conducted by the University or the affiliated colleges or institutions;
- (ii) sub-clause (3) of this clause empowers the Executive Council to prescribe by Statutes and Ordinances, the terms and conditions for the University centres to be maintained by the University at places other than the headquarters of the University.
- Clause 49.- (i) This clause empowers the Executive Council to prescribe by Statutes the relations of affiliated colleges, University colleges and recognised or approved institutions with the University and to provide for the matters specified therein;
- (ii) proviso to this clause empowers the Academic Council to prescribe by Regulations, the manner of teaching or training by the degree colleges or recognised institutions.
- Clause 50.- (i) This clause empowers the Executive Council to prescribe by Statutes, the qualifications such as passing of Higher Secondary School Certificate and equivalent examinations in such subjects and with such standards for enrolment of students of the University;
- (ii) proviso to this clause empowers the Executive Council to prescribe by Statutes, the qualifications such as passing of Secondary School Certificate and equivalent examinations in such subject with such standard for enrolment at diploma courses.

- Clause 51.- This clause empowers the Executive Council -
- (i) to prescribe by Ordinances, conditions under which students of the University shall reside;
- (ii) to make provisions by Ordinances in accordance with which the students of the University shall be provided residential accommodation in hostels of the University.
- Clause 52.- This clause empowers the Executive Council to prescribe by Statutes, the degrees, diplomas and other academic distinctions which the Executive Council may institute and confer.
- Clause 54.- Sub-clause (2) of this clause empowers the Executive Council to prescribe by Statutes, the manner in which an opportunity of being heard in his defence shall be given to the person concerned before an action is taken under that clause.
- Clause 55.- Sub-clause (3) of this clause empowers the Executive Council to prescribe by Statutes, the constitution of every committee described in that clause, the term of office of its members and the procedure to be followed by such committee.
- Clause 56.- Sub-clause (3) of this clause empowers the Executive Council to prescribe by Statutes, the procedure to be followed by the Examiners' Committee.
- Clause 57.- This clause empowers the Executive Council to make Statutes in accordance with which other members of the Inspection Committee may be appointed.
- Clause 58. Sub-clause (2) of this clause empowers the Executive Council to prescribe by Statutes, the constitution of College Development Committee, the term of office of its members and the procedure to be followed by the committee.
- Clause 59.- Sub-clause (2) of this clause empowers the Executive Council to prescribe by Statutes, the constitution of every Joint Consultative Committee, term of office of its members and its powers and functions.
- Clause 60.- Sub-clause (3) of this clause empowers the Executive Council to prescribe by Statutes, the constitution of Library Committee and Purchase Committee, the term of office of its members and its powers and functions.
- Clause 63.— Sub-clause (3) of this clause empowers the Executive Council to prescribe by Statutes, the date before which the Executive Council shall prepare the financial estimates for the ensuing year.
- Clause 64 This clause empowers the Executive Council to prescribe by Statutes, the date on or before which the annual report of the University shall be prepared and submitted to the Court.

- This clause empowers the Executive Council to prescribe by Statutes, Clause 71.the manner in which and the conditions subject to which the University shall make provisions for the benefit of its officers, teachers and other servants in such matters as insurance, pension, provident fund, etc.
- Sub-clause (2) of this clause empowers the Executive Council to Clause 72.prescribe by Statutes, the manner in which and the time within which the subscription to the provident fund and the contribution, if any, of the college or institution towards the fund shall be deposited in a Scheduled Bank or a Co-operative Bank.
- This clause empowers the Executive Council to prescribe by Statutes, Clause 74.the manner in which the election to any authority of the University shall be made according to the system of proportional representation by means of a single transferable vote by ballot.
- This clause empowers the Executive Council to prescribe by Statutes, Clause 82.the period for which and the manner in which the University shall provide for completion of courses of students in colleges affiliated to the Gujarat University.
- Clauses 83, 84 and 85.- These clauses empower the State Government to appoint first Vice-Chancellor, first Pro-Vice-Chancellor and first Registrar on such terms and conditions.
- (i) Sub-clause (1) of this clause empowers the State Government to Clause 86.specify by notification in the Official Gazette, a longer period not exceeding one year within which the first Vice-Chancellor shall perform functions specified in that sub-clause;
- sub-clause (2) of this clause empowers the first Vice-Chancellor
 - to make provisional Statutes necessary for constituting authorities and (a) regulating the procedure at their meetings and the transaction of their business and to draw up any rules that may be necessary for regulating the method of elections to the authorities, and
 - to frame the first Statutes, Ordinances and Regulations under the Act;
- sub-clause (3) empowers the State Government to direct by notification in the Official Gazette, the date or dates on which the authorities constituted under sub-clause (1) of this clause shall commence to exercise their functions.
- This clause empowers the first Vice-Chancellor to make additional Clause 88.-Statutes, to provide for any matter not provided for by the first Statutes and to make rules providing for the conduct of the work of the University until the Executive Council commences to exercise its functions.
- This clause empowers the State Government to make an order to remove any difficulty arising within the first three years in giving effect to the provisions of the Act.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 22nd February, 2003.

ANANDIBEN PATEL.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar,

Secretary to the Government of Gujarat. Dated the 22nd February, 2003. Legislative and Parliamentary Affairs Department.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.





The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT FISHERIES BILL, 2003.

GUJARAT BILL NO. 7 OF 2003.

A BILL

to provide for protection, conservation and development of fisheries in inland and territorial waters of the State of Gujarat and for regulation of fishing in the inland and territorial waters along the coast line of the State and for matters connected therewith or incidental thereto.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 1. (1) This Act may be called the Gujarat Fisheries Act, 2003.
 - (2) It extends to the whole of the State of Gujarat, including the territorial waters along the coastline of the State.
 - (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Short title, extent and

Definitions.

- 2. In this Act, unless the context otherwise requires,-
 - (a) "Adjudicating Officer" means such fishery officer not below the rank of Deputy Director of Fisheries, as the State Government may appoint for the purpose of section 17;
 - (b) "biological specimen" means any living or dead organisms;
 - (c) "Enforcement Officer" means such fishery officer as the State Government may appoint for the purpose of section 15;
 - (d) "Exotic fish" means all species of fish of any country other than India;
 - (e) "fish" means any aquatic animal and aquatic vegetation in all stages of their life span;
 - (f) "Fishery officer" means an officer appointed by the State Government to be Fishery officer for the purposes of this Act and includes an officer appointed to exercise the powers and perform functions of the Fishery officer,
 - (g) "fishing vessel" means any type of fishing crafts whether or not fitted with mechanical device for propulsion, which is engaged in fishing;
 - (h) "fishing gear" means any net, cage, trap or other contrivance used for fishing;
 - (i) "Licensing Officer" means such fishery officer, not below the rank of Superintendent of Fisheries, as the State Government may appoint for the purpose of section 10;
 - (j) "mariculture" means the culture of fish on the margin of sea in territorial waters;
 - (k) "Fishing Harbour" means the place such as port, harbour, wharf, pier, dock, jetty and landing place where landing or berthing facilities have been provided for fishing vessels and their adjoining areas set apart for repair yards, fuel and ice supply installations, auction hall, fish processing plant and within such limits as may be specified by the State Government from time to time;
 - (I) "prescribed" means prescribed by rules made under this Act;
 - (m) "private water" means water-
 - (i) which is the exclusive property of any person, or
 - (ii) in which any person has for the time being an exclusive right of fishing whether as owner, lessee or in any other capacity;

Explanation. - Water shall not cease to be "private water" within the meaning of this definition by reason only that other persons may have by custom a right of fishing therein;

- (n) "registered fishing vessel" means a fishing vessel registered under section 12;
- (o) "Registration Officer" means such fishery officer as the State Government may appoint for the purpose of section 12;

- (p) "specified area" means the area of specified inland water or the territorial water as the State Government may, by notification in the Official Gazette, specify;
- (q) "specified inland water" means such inland water as the State Government may, by notification in the *Official Gazette*, specify;
- (r) "territorial waters" in relations to the State of Gujarat means any part of the open sea adjoining the coast of the State within a distance of twelve nautical miles measured in accordance with sub-section (2) of section 3 of the Territorial Waters, Continental Shelf-Exclusive Economic Zone and other Maritime Zones Act, 1976.

80 of 1976.

CHAPTER II

PROTECTION OF FISH

3. No person shall use any dynamite or other explosive substance in any water with intent thereby to catch or destroy the fish therein.

Prohibition against destruction of fish by explosive.

4. (1) No person shall put any poison, lime or noxious materials into any water with intent thereby to catch or destroy any fish therein.

Prohibition against destruction of fish by poisoning of water.

- (2) The State Government may, by notification in the Official Gazette, suspend the operation of sub-section (1) in any specified area and may in the like manner modify or cancel any such notification.
- 5. No person shall introduce any exotic fish in any water with intent thereby to destroy any fish therein.

Prohibition against introduction of exotic fish.

6. (1) The State Government may, by notification in the Official Gazette, make rules for any water other than private waters for all or any of the following matters, namely:—

Power to make rules to protect fish

- (a) Prohibiting or regulating:-
 - (i) the erection or use of fishing gear,
 - (ii) the construction of weirs, dam and bunds,
- (iii) the release of any industrial waste sewage or effluent to the inland waters which may harmful to species of fish or the food of fish
- (b) regulating the dimension and the kind of nets to be used and the mode of using them;

- (c) prohibiting all fishing in the specified waters for a period not exceeding two years;
- (d) prohibiting the use of any gun, spear, arrow or the like in any water, with intent thereby to take or destroy any of the fish therein;
- (e) prohibiting introduction of any kind of fish which may be harmful to species of fish, without obtaining prior permission;
 - (f) regulating any fishery in inland waters;
- (g) to lease out public water resource for a specified period and to charge fees for such lease;
- (h) regulating the standard of sale of fish spawn, fry, fingerling and yearling;
- (i) prohibiting the fishing and marketing of the fish during closed season.

Explanation.— For the purpose of this clause, the 'closed season' means such period as the State Government may, by notification in the Official Gazette, specify.

- (2) In making rules under this section, the State Government may provide for—
 - (i) the seizure, forfeiture and removal of fishing gear erected or used in contravention of the rules,
 - (ii) the forfeiture of any fish taken by means of any such fishing gear, and
 - (iii) the forfeiture of fish taken or sold during the period specified in clause (i) of sub-section (1).
- (3) The State Government may, by notification in the Official Gazette, apply such rules or any of them to any private water with the consent, in writing, of the owner thereof and of all persons having for the time being any exclusive right of fishery therein.

CHAPTER III

REGULATION OF FISHING IN SPECIFIED AREA

Powers to regulate, restrict or prohibit certain fishing activities within specified area.

- 7. (1) The State Government may, having regard to the matters referred to in sub-section (2), by notification in the Official Gazette, regulate, restrict or prohibit in any specified area,—
 - (a) the fishing by such class or classes of fishing vessels and for such period as may be specified in the notification,
 - (b) the catching of such species of fish and for such period as may be specified in the notification,

- PART V]
- (c) the use of such fishing gears as may be specified in the notification,
- (d) the mariculture,
- (e) the collection of biological specimen, and
- (f) the number of fishing vessels which may be used for fishing.
- (2) In issuing a notification under sub-section (1), the State Government shall have regard to the following matters, namely:—
 - (a) the need to protect the interest of different sections of persons engaged in fishing, particularly of those engaged in fishing by use of traditional fishing craft such as catamaran, country craft or canoes,
 - (b) the need to conserve fish and to regulate fishing on scientific basis,
 - (c) the need to maintain law and order in the sea and on shore, and
 - (d) any other matter, that may be prescribed.
- 8. No owner or master of a fishing vessel shall use or cause or allow to be used, a fishing vessel for fishing in contravention of the notification issued under section 7.

Provided that nothing in such notification shall be construed as preventing the passage of any fishing vessel from or to the shore through any specified area to or from any area other than specified area, for the purpose of fishing in such other area or for any other purpose:

issued under section 7.

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Provided further that the passing of such fishing vessel through any specified area shall not in any manner cause any damage to any fishing nets or tackles belonging to any person who engages in fishing in the specified area by using any traditional fishing craft such as catamaran, country crafts or canoe.

9. No fishing vessel which is not licensed under section 10 shall, after the date of commencement of this Act (hereinafter referred to as "the said date"), be used for fishing in any specified area:

of using
fishing
vessels which
are not
licensed.

Prohibition

Prohibition of use of

fishing

vessels in contravention

notification

Provided that nothing in this section shall apply to any fishing vessel existing on the said date for a period of six months from the said date or such longer period as the State Government may, by notification in the *Official Gazette*, specify.

- 10. (1) An owner of a fishing vessel may make an application to the Licensing Officer for the grant of a licence for using the fishing vessel for fishing in a specified area and for a specified period.
- (2) Every application under sub-section (1) shall be in such form, contain such particulars and accompanied by such fees, as may be prescribed.
- (3) The Licensing Officer may, after making such inquiry as he deems fit and having regard to the factors specified in sub-section (4), either grant or refuse to grant to the owner of the fishing vessel, the licence for fishing in the specified area mentioned in the licence:

Licensing of fishing vessels.

Provided that no licence shall be granted in respect of a fishing vessel which is not registered under section 12:

Provided futher that, no licence shall be refused in respect of a fishing vessel unless the owner of the fishing vessel is given a reasonable opportunity of being heard.

- (4) In granting or refusing licence under sub-section (3), the Licensing officer shall have regard to the following factors, namely:—
 - (a) whether the fishing vessel is a registered fishing vessel,
- (b) the condition of the fishing vessel including accessories and fishing gear with which it is fitted,
 - (c) any notification issued under section 7,
 - (d) whether the specified period is mentioned in the application, and
 - (e) any other factors that may be prescribed.
- (5) A licence under this section shall be granted in such form, on such terms and conditions and on payment of such fees, as may be prescribed.
- (6) A licence granted shall be valid for a period of three years from the date on which it is granted unless it is suspended or cancelled earlier and may be renewed from time to time for a period of three years on payment of such fees as may be prescribed.

Cancellation, suspension and amendment of License.

- 11. (1) If the Licensing Officer is satisfied either on a reference made to him in this behalf or otherwise, that-
- (a) a licence granted under section 10 has been obtained by misrepresentation as to an essential fact, or
- (b) the holder of a licence has, without reasonable cause, failed to comply with any of the condition subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made or any notification issued thereunder,

then without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the Licensing Officer may, after giving the holder of the licence a reasonable opportunity of being heard, suspend or cancel the licence.

(2) Subject to any rules that may be made in this behalf, the Licensing Officer may vary or amend a licence granted under section 10.

Registration of vessel.

- 12. (1) The owner of every vessel used or intended to be used for the purpose of fishing and kept in the State shall get his vessel registered under this section.
- (2) (a) Every application for registration of a vessel shall be made by the owner of such vessel to the Registration Officer in such form, containing such particulars and accompanied by such fees as may be prescribed.

- (b) the owner of such vessel shall state in the application the port or fishries harbour from which he intent to operate his vessel.
 - (3) An application for registration of a vessel under sub-section (2) shall-
- (a) in the case of a vessel existing on the date of the commencement of this Act, be made within three months from the said date, and
- (b) in the case of any other vessel, be made by the owner thereof within one month from the date he becomes the owner thereof.
- (4) The Registration Officer may entertain an application made after the period specified in sub-section (3) if the applicant satisfies the Registration officer that he had sufficient cause for not making the application within the said period.
- (5) (a) The Registration Officer may, after making such inquiry as he deems fit, either grant or refuse to grant to the owner of vessels a certificate of registration.
- (b) The certificate of registration be in such form and on such terms and conditions as may be prescribed.
- (c) The Registration Officer shall specify in the certificate of registration, the port or fisheries harbour from which the owner of vessel is to operate his vessel.
- (d) The particulars of certificate of registration shall be entered in the register to be kept in such form as may be prescribed.
- (6) The certificate of registration granted under sub-section (5) shall be valid for a period of five years from the date on which it is issued, unless it is cancelled earlier, and may be renewed from time to time for a period of five years on payment of such fees as may be prescribed.
- (7) Every vessel registered under this section shall be assigned a registration mark by the Registration Officer which shall be displayed on the vessel in such manner as may be prescribed.
- 13. (1) No owner of a vessel registered under section 12 shall operate his vessel from any port or fishery harbour other than that specified in the certificate of registration issued to him except with the previous permission of the Registration Officer.
- (2) (a) An owner of a registered fishing vessel, who intent to operate his vessel from a port or fishery harbour other than the port or fishing harbour specified in the certificate of registration issued to him, may made an application for permission to so operate his vessel, stating in the application the name of the port or fishery harbour from which and the period for which he intent to operate his vessel.
- (b) On receipt of an application under clause (a), the Registration Officer may, by an order either grant or refuse to grant the permission.

Permission for operating vessel for the area other than specified in certificate of registration. (c) The Registration Officer may, by an order, terminate the permission granted under clause (b) before the expiry of the period for which it was granted:

Provided that the Registration Officer shall not refuse the permission under clause (b) or terminate permission under clause (c) unless the owner of the registered fishing vessel is given a reasonable opportunity of being heard.

Returns to be furnished by owner of registered fishing vessel.

- 14. (1) Every owner of a registered fishing vesel shall furnish to the Registration Officer returns of fishing in such forms, for such period, by such dates and in such manner, as may be prescribed.
- (2) The Registration Officer may inspect any registered fishing vessel at any time to verify whether the returns furnished under sub-section (1) are correcte and complete.

Powers of Enforcement Officer.

- 15. If the Enforcement Officer has reasons to believe that any fishing vessel is being or has been used in contravention of any of the provisions of this Act, or of any rule or order made or any notification issued thereunder or of any condition of the license issued under section 10, then he may-
 - (i) enter and search such vessel and impound such vessel and seize any fish found in it.
 - (ii) keep the impounded fishing vessel in such place and in such manner as may be prescribed,
 - (iii) dispose of the fish so seized and deposit the proceeds there of in such manner as may be prescribed, and
 - (iv) make a report of the contravention to the Court if the offence is punishable under clause (b), (c), (d) or (e) of sub-section (1) of section 21 and in other cases, to the Police officer in charge of a police station.

Finality of orders.

16. Every decision of the Licensing Officer under section 10 for granting or refusing to grant a licence for a fishing vessel or under section 11 for suspending, cancelling, verying or amending such licence and every decision of the Registration Officer under section 12 for registering or canceling registration or under section 13 for granting or refusing to grant permission or terminating permission shall, subject to any appeal under section 17, be final.

CHAPTER IV

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APPEALS AND REVISION

Appeal.

17. (1) Any person aggrieved by the order of-

- (a) the Licensing Officer under section 10 refusing to grant a licene for a fishing vessel or under section 11 suspending, canceling, varying or amending a licence granted for a fishing vessel, or
- (b) the Registering Officer under section 12 refusing to grant the registration of vessel or canceling the registration of vessel or under section 13 refusing permission to operate vessel at other port or fishing harbour or terminating such permission

may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the Adjudicating Officer:

Provided that the Adjudicating Officer may entertain an appeal after the expiry of the period of thirty days, if the appellant satisfies the Adjudicating Officer that he had sufficient cause for not preferring an appeal within such period.

(2) On receipt of an appeal under sub-section (1), the Adjudicating Officer shall after giving the appellant a reasonable opportunity of being heard, pass such order in the appeal as he deems just and proper.

36 Of 1963.

18. In computing the period laid down in section 17, the provisions of sections 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply.

Application of sections 4 and 12 of Limitation Act, 1963.

Revision.

19. (1) Subject to rules that may be made in this behalf, the State Government may, of its own motion within two years or on an application by an aggrieved person made to it within one year from the date of an order passed by an Adjudicating Officer in appeal under section 17, call for and examine the record of any such order and pass such order thereon as it thinks just and proper:

Provided that no record of any proceeding of the Adjudicating Officer shall be called for-

- (i) in a case where an appeal lies under section 16 but no appeal has been filed, or
- (ii) in a case where appeal has been made under section 17 and such apeal is pending.
- (2) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.
- 20. No civil court shall have jurisdiction to deal with or decide any question which the Fishery Officer, Licensing Officer, the Registration officer, the Adjudicating Officer or, as the case may be, the State Government is empowered to deal with or decide by or under this Act and no injunction shall be granted by any civil court in respect of any action taken or to be taken in pursuance of any provision of this Act.

Bar of jurisdiction of civil courts.

CHAPTER V

OFFENCES AND PENALTIES

Offences and penalties.

- 21. (1) (a) Whoever contravenes the provisions of section 3, 4 or 5 shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine not exceeding ten thousand rupees or with both.
 - (b) Whoever use any fishing vessel for fishing in contravention of section 8 shall, on conviction, be punished with fine not exceeding fifty thousand rupees.
 - (c) Whoever use any fishing vessel which is not licensed for fishing in any specified area in contravention of section 9 shall, on conviction, be punished with fine not exceeding fifty thousand rupees.
 - (d) Whoever operate his fishing vessel from any port or fishery harbour other than that specified in the certificate of registration in contravention of sub-section (1) of section 13 shall, on conviction, be punished with fine not exceeding twenty thousand rupees.
 - (e) Any person who commits a breach of any of the provisions of the rules or the order made under this Act shall be punishable with fine which may extend to ten thousand rupees and when breach is continuing one, with a daily fine not exceeding one hundred rupees duing the peiod of continuance of such breach.
 - (2) When an offence under any of clauses (a) to (d) of sub-section (1) is a continuing one, the offender shall be punished with a daily fine not exceeding ten thousand rupees during the period of continuance of such offence.

Offences by Companies.

22. (1) Where an offence under this Act has been committed by a company, every person who at time the offence was committed was in-charge of, and was responsible to the company for conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this section has been committed by a company and it is provided that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

- (a) "company" means a body corporate and includes a firm or other association of individuals, and
- (b) "director" in relation to a firm means a partner in the firm.

2 of 1974.

- 23. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under clause (a) of sub-section (1) of section 21 or under any rule made under section 6 shall be cognisable.
- (2) No court shall take cognisance of any offence punishable under clause (b), (c), (d) or (e) of sub-section (1) of section 21 except on a report in writing made by the Enforcement Officer under section 15.

CHAPTER VI

FISHERIES TERMINAL AUTHORITY

24. (1) The State Government may, by order, constitute Fisheries Terminal Authority (hereinafter referred to as "the Authority") for such area as may be specified in the order to develop, maintain, manage and administer the fisheries harbour, fish landing jetties including any wharf, pier, dock and other landing place and their adjoining areas set apart by the Authority for repair yards, fuel and ice supply installation, auction hall, fish processing plants, godowns and fish markets.

Constitution and composition of Fisheries Terminal Authority.

Cognisance

of offences.

(2) The Authority shall consist of the following members who shall be appointed by the State Government, namely:—

		O1 - t
(i)	Commissioner of Fisheries	Chairman
(ii)	One representative from the Gujarat	
	Maritime Board	Member
(iii)	One representative from Marine	
	Products Export Development	
	Authority	Member
(iv)	One representative from the Gujarat	1
	Electricity Board	Member
(v)	One representative from the Gujarat	,
	Water Supply and Sewage Board	Member

(vi)	One representative from the Gujarat		
	Fisheries Central Co-operative	·	
	Association	Member	
(iiy)	One representative from the National Bank		
	for Agricultural and Rural Development	Member	
(viii)	One representative from the National	24	
	Co-operative Development Corporation	Member	
(ix)	One representative from Fish Processors		
	Association	Member	
(x)	One representative from Boat Owners		
	Association	Member	
(xi)	One representative from Custom		
:	Department	Member	
(xii)	One representative from Fish Traders	Member	
(xiii)	One representative from Lead Bank	Member	
(xiv)	One representative from the		
	concerned local Municipality	Member	
(xv)	Deputy Director of Member	- Secretary	

Functions of Authority.

25. (1) The Authority shall perform the following functions, namely:—

concerned region.

- (a) to develop, regulate and control the fisheries harbour terminals;
- (b) to acquire land and purchase of equipment and machinery for fisheries harbour terminals;
- (c) to provide safety measures for arrival and departure of the vessels and shore installations within the fisheries harbour terminals;
- (d) to arrange quick and hygienic handling and disposal of fish within the fisheries harbour terminals;
- (e) to keep the fisheries harbour area clean and free from pollution;
- (f) to perform such other functions as may be entrusted by State Government; and
- (g) to do such other functions as are necessary for efficient discharge of functions of the Authority.

Amount to be charged for providing services.

26. The Authority may charge such amount as may be fixed by the State Government from time to time, for providing services at the fishing harbour.

CHAPTER VII

MISCELLANEOUS

27. (1) Nothing in this Act shall apply to any vessels belonging to the Central Government or any State Government or Corporation owned or controlled by the Central Government or the State Government which are being used for the purposes of survey and research.

Exemption.

- (2) Where the State Government is of the opinion that it is necessary so to do in the public interest, it may by notification in the Official Gazette, exempt subject to such conditions, such class or classes of fishing vessels used for fishing in any specified area and for such period as it may specify in the notification, from all or any of the provisions of this Act.
- 28. All officers and employees and the members of the Authority shall, when acting or purporting to act in pursuance of the provisions of this Act or any rule made thereunder, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Members, officers and employees to be public servants.
Protection of action taken

29. No suit, prosecution or other legal proceeding shall lie against any member of the Authority or any Officer or employee of the State Government for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act, or any rule or order made thereunder.

Power to make rules.

in good faith.

- 30. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the objects of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules for all or any of the following matters, namely:—
 - (a) the protection of fish under section 6,
 - (b) the form in which the application for grant of licence for fishing vessel shall be made and the particulars and the fees which shall accompany such application under sub-section (2) of section 10,
 - (c) the form in which and the terms and conditions on which the licence for fishing vessel may be granted under sub-section (5) of section 10;
 - (d) the rules subject to which the Licensing Officer may vary or amend the licence under sub-section (2) of section 11;
 - (e) the form in which the application for registration of vessel shall be made and the particulars and the fees which shall accompany such application under sub-section (2) of section 12;
 - (f) the form in which and the terms and conditions on which certificate of registration shall be granted and the form in which the register for entering the particulars of such certificate shall be made under sub-section (5) of section 12;

XLV of 1860.

- (g) the manner in which the registration mark of vessel shall be displayed by the owner under sub-section (7) of section 12;
- (h) the form in which, the period within which, the date by which and the manner in which the owner shall furnish the return under sub-section (1) of section 14;
- (i) the place at which and the manner in which the impounded fishing vessel shall be kept by the Enforcement Officer under section 15;
- (k) the manner in which the fish so seized shall be disposed of by the Enforcement officer and to deposit the proceeds thereof under section 15;
- (1) the rules subject to which the State Government may call for and examine record of order passed by Adjudicating officer under sub-section (1) of section 19, and
- (m) any other matter which is to be or may be prescribed under this Act.
- (3) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication:

Provided that if the State Government is satisfied that the circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any rule to be made under this section.

- (4) All rules made unde this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or to such modifications as the Legislature may make during the session in which they are so laid, or the session immediately following.
- (5) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

Repeal.

- 31. (1) The Indian Fisheries Act, 1897 in its application to the State of Gujarat is hereby repealed.
- (2) Notwithstanding repeal of the said Act, anything done or any action taken (including any rule or order made, notification issued or appointment made) by or under the said Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made or taken by or under this Act and shall continue in force until superceded by anything done or any action taken under the provisions of this Act.

4 of 1897.

STATEMENT OF OBJECTS AND REASONS

The State of Gujarat, since its inception, do not have any separate law for the balanced development and quality improvement of the fisheries sector. The provisions of the Indian Fisheries Act, 1897 which are applied in the State, are not adequate to regulate the fisheries in the State especially when the State has an extensive maritime belt abounding in various kinds of fish. With a view to conserving the marine flora and fauna against over exploitation and to regulate the fisheries in the State, it is considered necessary to make suitable special legislation to provide for regulation, protection, conservation and development of fisheries in the inland and territorial waters of the State. This Bill seeks to achieve the aforesaid objects.

The following notes on clauses explain, in brief, the important provisions of the Bill:-

Clause 1. - This clause provides for short title, extent and commencement of the Act.

Clause 2. - This clause defines certain terms used in the Bill.

Clause 3. – This clause provides for the prohibition against destruction of fish by using dynamite or any explosive substance in any water.

Clause 4. – This clause provides for the prohibition against destruction of fish by poisoning the water.

. Clause 5. - This clause prohibits the introduction of exotic fish in any water.

Clause 6. — This clause empowers the State Government to make rules for the protection of fish in any water other than private water for the matters specified therein. It also empowers the State Government to apply such rules to any private water with the consent of the owner of such private water.

Clause 7. – This clause empowers the State Government to regulate, restrict or prohibit certain fishing activities in any specified area.

Clause 8. – This clause prohibits the use of any fishing vessel for fishing in any specified area for which a notification has been issued under section 7.

Clause 9. — This clause prohibits the use of vessel for fishing in any water in specified area without obtaining a licence by the owner.

Clause 10. – This clause provides for procedure for obtaining a licence. It also empowers the Licensing Officer to grant or refuse to grant the licence.

Clause 11. - This clause provides for cancellation, suspension and amendment of a licence.

Clause 12. – This clause provides that the owner of fishing vessel which is used or intended to be used for fishing shall get his vessel registered. It also provides for procedure for such registration.

Clause 13. – This clause provides for obtaining permission of the Registration officer for operating registered fishing vessel from any port or fishery harbour other than that specified in certificate of registration.

- Clause 14. This clause provides for furnishing return of fishing by the owner of fishing vessel.
- Clause 15. This clause empowers the Enforcement Officer to enter, search and seize the fishing vessel which is being used in contravention of any of the provisions of the Act.
- Clause 16. This clause provides for finality of orders of Licensing Officer and Registration Officer.
- Clause 17. This clause contains provisions for appeal to Adjudicating Officer against the order of licencing officer and of Registration Officer.
- Clause 19. This clause empowers the State Government to call for and examine the record of order passed by an Adjudicating Officer and to pass such order thereon as it thinks just and proper.
- Clause 20. This clause bars the jurisdiction of civil court.
- Clause 21. This clause provides for penalties for contravention of any provisions of the Act or the rules or order made thereunder.
- Clause 22. This clause provides for the offences committed by the companies.
- Clause 23. This clause provides for cognisance of offences.
- Clause 24. This clause provides for the constitution and composition of Fisheries Terminal Authority.
- Clause 25. This clause provides for the functions to be performed by the Authority.
- Clause 26. This clause empowers the Authority to charge such amount, as may be fixed by the State Government, for providing services at the fisheries terminals.
- Clause 27. This clause exempt the vessels belonging to Central and State Government or Corporation from the provisions of the Act, which are being used for survey and research purpose. It also empowers the State Government to exempt, such class or classes of fishing vessels from all or any of the provisions of the Act.
- Clause 28. This clause provides that all officers and employees and the members of the Authority shall be public servants.
- Clause 29. This clause provides for usual indemnity for acts done in good faith.
- Clause 30. This clause empowers the State Government to make, by notification in the Official Gazette, rules for carrying out the purposes of Act.
- Clause 31. This clause provides for repeal of Indian Fisheries Act, 1897 and the savings.

FINANCIAL MEMORANDUM

The Bill provides for appointment of Fisheries Officer, Licensing Officer, Adjudicating Officer etc. Since existing staff of the Department will perform the functions of such officers, there would not any financial liability on State ex-checker on this count. Therefore, the Bill, if enacted and brought into force, would not involve any additional expenditure from the consolidated fund of the State.

BHUPENDRASINH CHUDASAMA

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves delegation of legislative powers in the following respects:-

- Clause 1. Sub-clause (3) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.
- Clause 2. (i) Sub-clauses (a), (c), (f) (i) and (o) of this clause empower the State Government to appoint Adjudicating Officer, Enforcement Officer, Fishery Officer, Licensing Officer and Registration Officer, respectively;
- (ii) sub-clause (k) of this clause empowers the State Government to specify the limit of adjoining area of the Fishing Harbour;
- (iii) sub-clause (p) of this clause empowers the State Government to specify, by notification in the *Official Gazette*, the area of specified inland water or the area of the territorial water to be the specified area;
- (iv) sub-clause (q) of this clause empowers the State Government to specify, by notification in the Official Gazette, such inland water to be the specified inland water.
- Clause 4. Sub-clause (2) of this clause empowers the State Government to suspend, by notification in the Official Gazette, the operation of provision of clause (1) in any specified area.
- Clause 6.—(i) Sub-clause (1) of this clause empowers the State Government to make rules, for all or any of the matters specified therein;
- (ii) Explanation to para (i) of sub-clause (1) of this clause empowers the State Government to specify, by notification in the *Official Gazette*, the period of the closed season;
- (iii) sub-clause (3) of this clause empowers the State Government to apply, by notification in the *Official Gazette*, the rules to the owner of any private water or to other persons having exclusive right of fishing in such private water, with his consent.

- Clause 7. Sub-clause (1) of this clause empowers the State Government to regulate, restrict or prohibit, by notification in the Official Gazette certain fishing activities in any specified area for the matters specified in sub-clause (2).
- Clause 9. Proviso to this clause empowers the State Government to specify, by notification in the *Official Gazette*; to extend the period for use of fishing vessel without licence in any specified area.
- Clause 10. (i) Sub-clause (2) of this clause empowers the State Government to prescribe by rules, the form of application for grant of a licence, the particulars which it shall contain and the fees with which it shall be accompanied;
- (ii) para (e) of sub-clause (4) of this clause empowers the State Government to prescribe by rules, any other factors to be taken into consideration while granting or refusing the licence;
- (iii) sub-clause (5) of this clause empowers the State Government to prescribe by rules, the form of Licence and the terms and conditions with which and the fees on payment of which the licence may be granted;
- (iv) sub-clause (6) of this clause empowers the State Government to prescribe by rules the fees to be paid for renewal of the licence.
- Clause 11. Sub-clause (2) of this clause empowers the State Government to prescribe by rules, subject to which the licencing officer may vary or amend a licence.
- Clause 12. (i) para (a) of sub-clause (2) of this clause empowers the State Government to prescribe by rules, the form of application for registration of vessel, the particulars which it shall contain and the fees with which it shall be accompanied;
- (ii) para (b) of sub-clause (5) of this clause empowers the State Government to prescribe by rules, the form of certificate of registration of a vessel and the terms and conditions with which registration may be granted;
- (iii) para (d) of sub-clause (5) of this clause empowers the State Government to prescribe by rules, the form of register in which the particulars of certificate shall be entered into;
- (iv) sub-clause (6) of this clause empowers the State Government to prescribe by rules, the fees to be paid for the renewal of the certificate of registration;
- (v) sub-clause (7) of this clause empowers the State Government to prescribe by rules, the manner in which a registration mark shall be displayed on the vessel.
- Clause 14. Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the form of return in which, the time by which and the manner in which, the owner of a registered fishing vessels shall furnish the return of fishing.

- Clause 15. (i) Sub-clause (ii) of this clause empowers the State Government to prescribe by rules, the place at which and the manner in which the impounded fishing vessel shall be kept;
- (ii) Sub-clause (iii) of this clause empowers the State Government to prescribe by rules, the manner in which the fish to be disposed of and to deposit the proceeds thereof.
- Clause 19. Sub-clause (1) of this clause empowers the State Government to prescribe, the rules subject to which the State Government may call for and examine the record of any order passed by an Adjudicating Officer.
- Clause 24. This clause empowers the State Government to constitute, by an order, the Fisheries Terminal Authority.
- Clause 26. This clause empowers the State Government to fix the amount to be charged by the Authority for providing services at the fishing harbour.
- Clause 27. Sub-clause (2) of this clause empowers the State Government to exempt, by notification in Official Gazette, any class of fishing vessels from the provisions of the Act for such period as may be specified in such notification.
- Clause 30. Sub-clause (1) of this clause empowers the State Government to make, by notification in the Official Gazette, rules generally for carrying out the object of the Act and particularly for all or any of the matters specified in sub-clause (2) thereof.

The delegation of the legislative powers as aforesaid is necessary

and is of a normal character.

Dated the 26th February, 2003.

BHUPENDRASINH CHUDASAMA.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 26th February, 2003. Secretary to the Government of Gujarat.

Legislative and Parliamentary Affairs Department.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT WATER SUPPLY AND SEWERAGE BOARD (AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 8 OF 2003.

A BILL

further to amend the Gujarat Water Supply and Sewerage Board Act, 1978.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:--

1.(1) This Act may be called the Gujarat Water Supply and Sewerage Board (Amendment) Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

V Ex 8-1

Amendment of section 4 of Guj. 18 of 1979.

2. In the Gujarat Water Supply and Sewerage Board Act, 1978, in section 4, in sub-section (1), for clause (g), the following clause shall be substituted, namely:--

Guj. 18 of 1979.

"(g) four members to be appointed by the State Government, from amongst persons who are experts in economics or development planning and engineering and out of such members one shall be a woman.".

STATEMENT OF OBJECTS AND REASONS

In pursuance of the general policy of the State Government to give representation to women on boards and corporations owned or controlled by the State Government, it is proposed to give representation to a woman on the Gujarat Water Supply and Sewerage Board by empowering the State Government to appoint a woman out of the four members to be appointed by the State Government who are experts in economic or development planning and engineering.

The Bill seeks to amend section 4 of the Gujarat Water Supply and Sewerage Board Act, 1978 to achieve the aforesaid object.

MAROTTAMBHAI PATEL

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers in the following respect:--

Clause 1.—Sub- clause (2) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.

The delegation of legislative power as aforesaid is necessary and is of a normal character.

Dated the 26th February, 2003.

NAROTTAMBHAI PATEL

By order and in the name of the Governor of Gujarat,

Gandhinagar,

V. M. KOTHARE,

Dated the 27th February, 2003.

Secretary to the Government of Gujarat Legislative and Parliamentary Affairs Department.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill. which was introduced on the 28th February, 2003 by Dr. Mayaben Kodnani is published under rule 127A of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 9 OF 2003.

THE GUJARAT PREVENTION OF CONTEMPT OF THE PEOPLE (BY PUBLIC SERVANT) BILL, 2003.

A BILL

to provide for the protection of the people from insult and disrespect shown by public servant against them and for assuring dignity of the individual.

It is hereby enacted in the Fifty Fourth Year of the Republic of India as follows:—

- (1) This Act may be called the Gujarat Prevention of Contempt of the People (By Public Servant) Act, 2003.
 - (2) It extends to the whole of the State of Gujarat.
 - (3) It shall come into force at once.
- 2. In this Act, unless the context otherwise requires-
 - (1) The words "contempt of the people" denotes an act or an omission by public servant falling under any of the description hereinafter following, namely:
 - (a) wandering or remaining absent from the place of duty in order to avoid workduring duty hours.

Short title extent and commencement

Definitions.

- (b) reading newspapers, magazines or other books or hearing radio which is not a part of his duty during the duty hours at one's duty place.
- (c) sitting or behaving in disorderly manner at one's place of duty during dutyhours.
- (d) not replying properly and politely to any person coming for official work or for inquiry.
- (e) not replying properly and to the point to any written application made by any person.
- (f) insulting or disrespecting any person by using abusive or offensive language.
- (g) Asking for or accepting anything from any person which is not necessary for one's duty or job assigned to a public servant.
- (h) furnishing false information to any person.
- (i) omitting to render or furnish assistance to any person.
- (j) disobedience of any law, rule, order or direction issued by the State Government.
- (2) "public servant" means every person;
 - (a) in the service or pay of the State Government or remunerated by fees or commission for the performance of any public duty by the State Government.
 - (b) in the service or pay of a local authority or a corporation established under a Central or State Act or a Government company as defined in section 617 of the Companies Act, 1956, excepting 'Judges' as defined in the Indian Penal Code.

1 of 1956 45 of 1960.

Punishment for Contempt.

3. Any Public servant who commits contempt of the people shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both:

Provided that the public servant may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Judge.

Jurisdiction

4. Any person who feel or comes to know that any public servant has committed contempt of the people may apply to the Civil Judge within whose jurisdiction the alleged contempt has been committed with supporting affidavits of himself and of witnesses, if any, and with all or any documentary evidence available with him:

Provided that application referred to in this section may be presented personally or may be sent by post.

Show Cause Notice.

5. The Civil Judge will give or send by post receipt of the application within three days to the applicant and issue a showcause notice to the public servant concerned within eight days.

Public Servant to reply affidavite.

6. A public servant who receives a show cause notice from the Civil Judge will send his reply with affaidavit of himself and of witnesses, if any, and with all or any documentary evidence available with him for his or her defence within ten days from the receipt of the show cause notice.

7. After receiving reply from the public servant if the Civil Judge thinks it necessary to call the applicant and the public servant for personal hearing, he will fix a date for the same and intimate about it to the applicant and the public servent concerned and after hearing the both, pass a necessary order under section 3 or dismiss the application.

Hearing and Disposal.

8. The order of the Civil Judge shall be final, subject to any modifications alteration or correction made by the High Court in revision either on application of any party or suomoto.

Revision by High Court.

9. No court shall have jurisdiction to question the legality of any action taken or any decision given by the Civil Judge under this Act in connection with the contempt of the people by public servant and no suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Protection for the acts done in good faith.

10. Nothing in this Act shall be deemed to prohibit or restrict any action for which the public servant is lable under any other law or rules for the time being in force.

No prohibition for action under other

11. (1) The State Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

- (2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modification as the Legislature may make during the session in which they are so laid or the session immediately following.
- (3) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette* and shall there upon take effect.

STATEMENT OF OBJECTS AND REASONS

The constitution of India recognises dignity of the individual in the preamble but during these fifty four years of independence, people feel by experience that instead of peoples' rules, public servant at many a times are openly disrespecting and insulting common people in the State and behaving many a times in such a way that people at large have been losing confidence in public administration and hence for the protection of the people from insult and disrespect by public servants and for assuring dignity of the individual some easy and quasi judicial summary remedies are necessary.

This Bill seeks to achieve the above objects.

GANDHINAGAR.
Dated 30th January, 2003.

Dr. Mayaben Kodnani M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the State Government to make rules for carrying out the purposes of the Act.

The delegation of legislative powers as aforesaid is essential and of normal character.

GANDHINAGAR.
Dated 30th January, 2003.

Dr. Mayaben Kodnani M.L.A.

Gandhinagar

Dated: 28th February, 2003:

D. M. PATEL,
Secretary
Gujarat Legislative Assembly.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 28th February, 2003 by Dr. Mayaben Kodnani M.L.A. is published under rule 127A of the Gujarat Legislative Assembly Rules for a general information.

GUJARAT BILL NO. 10 OF 2003.

THE GUJARAT PROHIBITION ON OBSCENE ADVERTISEMENTS, PHOTOGRAPHS AND POSTERS BILL, 2003.

A BILL

to provide for the prohibition on obscene advertisements, photographs and posters in the State of Gujarat.

It is hereby enacted in the Fifty fourth Year of the Republic of India as follows:—

- 1. (1) This Act may be called the Gujarat Prohibition on Obscene Advertisements, Photographs and Posters Act, 2003.
 - (2) It extends to the whole of the State of Gujarat.
 - (3) It shall come into force at once.

41 of 1860.

- 2. In this Act, unless the context otherwise requires, the word "obscene" shall have the meaning assigned to it in the Indian Penal Code.
- 3. No person shall publish, sell, let to hire, publicly exhibit or in any manner put into circulation or for purposes of publication, sale, hire, distribution, public exhibition or circulation, make, produce or have in his possession any obscene advertisement, photograph or poster whatsoever.
- 4. Whoever contravenes or abets the contravention of the provision of section 3 shall, on conviction, be punished with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

Short title extent and commencement.

Definitions.

Prohibition on obscene advertisements, photographs and posters.

Penalties.

STATEMENT OF OBJECTS AND REASONS

Of late, the publication of obscene advertisements, photographs and posters are being resorted to on wide scale. This creates an unhealthy atmosphere for the society in general and particularly for younger generation. This is totally against the moral concept of public opinion.

It is therefore, high time now to prevent this immoral practice, as existing Laws or Rules thereunder are found inadequate and ineffective.

Hence, this Bill.

Dated 30th January, 2003. Gandhinagar.

Dr.Mayaben Kodnani M.L.A.

Gandhinagar

Dated: 28th February, 2003.

D. M. PATEL,
Secretary
Gujarat Legislative Assembly.

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PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bills which was introduced on the 28th February, 2003 by Dr. Chandrikaben Chudasama M.L.A. is published under rule 127A of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 11 OF 2003.

THE GUJARAT PROHIBITION OF EVE-TEASING BILL, 2003.

A BILL

to prohibit eve-teasing and to provide for certain other matters connected therewith

Whereas it is expedient to prohibit eve-teasing and to provide for certain other matters connected therewith. It is hereby enacted in the Fifty-fourth year of the Republic of India as follows:—

1. (1) This Act may be called the Gujarat Prohibition of eve-teasing Act, 2003.

Short title, extent and commencement.

(2) It extends to the whole of the State of Gujarat.

V-EX..-11-1

11-1

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Definitions

- 2. In this Act, unless the context otherwise requires,—
 - (a) The word "Man" denotes a male human being of any age, the word "Woman" denotes a female human being of any age;
 - (b) "Public place" means any place intended for use by, or accessible to the public and includes any public conveyance.

Eve-teasing

3. Eve-teasing means a man by words either spoken or written or by singing reciting or uttering any indecent words or by visible representation or gestures or by song or ballad does any act to the annoyance of any woman in any public place.

Punishment for Eveteasing.

- 4. (1) If a person indulges in Eve-teasing, he shall, on first conviction, be punished with imprisonment for a term which may extend to fifteen days and shall also be liable to fine:
- Provided that the term of imprisonment in such cases shall not be less than seven days.
- (2) In the event of a second or subsequent conviction, the offender shall be punishable with imprisonment for a term which may extend to one month and shall also be liable to fine:

Provided that the term of imprisonment in such cases shall not be less than fifteen days.

Offences to be cognizable and non-bailable.

5. Notwithstanding anything contained in any other law for the time being in force, an offence under this Act shall be cognizable and non-bailable.

Power of court to try cases summarily.

6. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act shall be tried by summary procedure by a Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial.

2nd of 1974

STATEMENT OF OBJECTS AND REASONS

In recent years there has been a significant increase in the complaints of Eveteasing especially at public places and the existing provisions in general laws have been found to be inadequate for tacking this growing menace effectively. Eve teasing is a stingma on the society and it should be nipped in bud. It is, therefore, expedient in the public interest to devise a legislative measure with a view to tackling this social evil more effectively. In order to prove such legislative measure a psychologically deterrent to the offenders, the offence of Eve-teasing should be made cognizable and non bailable. A provision should also be made for summary trial of cases in the interest of speedy justice.

This Bill is intended to achieve the aforesaid objects.

Gandhinagar

Dated: 11th February, 2003. .

Dr. CHANDRIKABEN CHUDASAMA, M. L. A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposal for delegation of legislative powers:—

Clause 1(3) .- This clause provides that the Act shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint

The above proposal is of a normal character.

DR. CHANDRIKABEN CHUDASAMA M.L.A.

Gandhinagar.
Dated the 11th February, 2003.

Gandhinagar

D. M. PATEL,

Secretary

Dated: 28th February, 2003.

Gujarat Legislative Assembly.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.





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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT NATIONAL LAW, UNIVERSITY BILL, 2003.

GUJARAT BILL NO. 12 OF 2003.

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to establish and incorporate a National Law University in the State of Gujarat

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It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows

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PRELIMINARY

1, (1) This Act may be called the Gujarat National Law University.

Act; 2003.

Short title and commencement.

- (2) This section shall come into force at once and the remaining provisions shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.
- 2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Academic Council" means the Academic Council of the University:

V- Ex.12-1

- (b) "Chairman" means the Chairman of the General Council of the University;
- (c) "Director" means the Director of the University appointed by General Council under Section 33;
- (d) "Executive Council" means the Executive Council of the University;
- (e) "Finance Committee" means the Finance Committee of the University Constituted under section 28;
- (f) "General Council" means the General Council of the University referred to in section 12;
- (g) "regulations" means the regulations made under this Act;
- (h) "University" means the Gujarat National Law University established under section 3 of this Act;
- (i) "Visitor" means the Visitor of the University.

CHAPTER II

THE UNIVERSITY

Establishment and incorporation of University.

- 3. (1) There shall be established, in the State of Gujarat, a University by the name of the Gujarat National Law University which shall consist of the Visitor, the Chairman, the General Council, the Executive Council, the Academic Council and the Officers of the University;
- (2) The University shall be a body corporate by the name of "The Gujarat National Law University" having perpetual succession and a common seal, and may sue or be sued by the said name and shall be competent to acquire, hold and dispose of property, both movable and immovable and to contract and to do all things necessary for the purposes of this Act.

Headquarters of University.

4. The headquarters of the University shall be at such place as the State Government may, by notification in the *Official Gazette*, specify.

Objects of Surveysity.

5. The objects of the University shall be to advance and disseminate learning and knowledge of law and legal processes and their role in national development; to develop in the students and the research scholars a sense of responsibility to serve society in the field of law by developing skills in regard to advocacy, legal services, legislation, parliamentary practice, law reforms and such other matters; to make law and legal processes efficient instruments of social development; and to promote inter-disciplinary study of law in relation to management, technology, international co-operation and development.

University open to all irrespective of religion, class, sex, race, etc.. 6. The University shall be open to all persons irrespective of religion, sex, race, caste, creed, class, opinion, place of birth or religious belief or political opinion and it shall not be lawful for the University to impose on any person any test whatsoever relating to sex, race, caste, creed, class, place of birth, opinion, religious belief or profession in order to entitle him to be admitted as a student in the University or to be appointed thereto as a teacher or to hold any office or post in the University or to qualify for any degree, diploma or any academic distinction or to enjoy or exercise any privilege of the University.

Powers and functions of University.

- 7. The University shall have the following powers and perform the following functions, namely:-
 - to administer and manage the University and such centers of research, education and instruction as are necessary for the furtherance of the objects of the University;

- (ii) to provide for instruction in such branches of knowledge or learning pertaining to law as the University may think fit and to make provision for research and for advancement and dissemination of knowledge of law;
- (iii) to organize and undertake extra-mural teaching and extension services;
- (iv) to hold examinations and to grant diplomas or certificates, and to confer degrees including joint degrees in law combined with other disciplines and other academic distinctions on persons subject to such conditions as the University may determine and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;
- (v) to confer honorary degrees or other distinctions in such manner as may be laid down by regulations;
- (vi) to fix, demand and receive fees and other charges;
- (vii) to institute and maintain halls and hostels and to recognize places
 of residence for the students of the University and to withdraw
 such recognition accorded to any such place of residence;
- (viii) to establish such special centres, specialized study centres or other units for research and instruction as are, in the opinion of the University, necessary for the furtherance of its objects;
- (ix) to supervise and control the residence and to regulate the discipline of the students of the University;
- (x) to create academic, technical, administrative, ministerial and other posts and to make appointments thereto;
- (xi) to regulate conduct and enforce discipline among the employees
 of the University and to take such disciplinary measures as may
 be deemed necessary;
- (xii) to institute Professorships, Associate Professorships, Assistant Professorships, Readerships, Lecturerships and any other teaching, academic or research posts required by the University;
- (xiii) to appoint persons as Professors, Associate Professors, Assistant Professors, Readers, Lecturers or otherwise as teachers and researchers of the University;
- (xiv) to establish and run specialised Schools for studies and research in various disciplines in law and related fields;
- (xv) to institute and award fellowships, scholarships, prizes and medals;
- (xvi) to provide for printing, reproduction and publication of research and other works and to organize exhibitions:
- (xvii) to sponsor and undertake research in all aspects of law, jurisprudence, justice, legislation, parliamentary practice and related fields;
- (xviii) to co-operate with any other organization in the matter of education, training and research in law, jurisprudence, justice, legislation, parliamentary practice and allied subjects for such

purposes as may be agreed upon on such terms and conditions as the University may, from time to time, determine;

- (xix) to co-operate with institutions of higher learning in any part of the world having objects wholly or partially similar to those of the University, by exchange of teachers and scholars and generally in such manner as may be conducive to the common objects;
- (xx) to regulate the expenditure and to maintain the accounts of the University;
- (xxi) to establish and maintain, within the premises of the University or elsewhere, such class rooms and study halls as the University may consider adequate and necessary and to establish and maintain such libraries and reading rooms as may appear convenient or necessary for the University;
- (xxii) to receive grants, subventions, subscriptions, donations and gifts for the purpose of the University and consistent with the objects for which the University is established;
- (xxiii) to purchase, take on lease or accept as gifts or otherwise, any land or building or works, which may be necessary or convenient for the purpose of the University, on such terms and conditions as it may think fit and proper, and to construct, alter and maintain any such buildings or works;
- (xxiv) to sell, exchange, lease or otherwise dispose of movable or immovable property of the University, on such terms as it may think fit and proper without prejudice to the interests and activities of the University:

Provided that the University shall not sell, exchange, lease or otherwise dispose of movable or immovable property granted by the State Government without prior approval of the State Government or without compliance of the terms and conditions on which the State Government has given approval;

- (xxv) ito draw and accept, to make and endorse, to discount and negotiate promissory notes, bills of exchange, cheques or other negotiable instruments;
- into (xxvi) to execute conveyance transfer, reconveyance; mortgage, lease, licence and agreement in respect of property; movable or immovable, including Government securities belonging to the University or to be acquired for the pulpose of the University;
 - (xxvii) to appoint any person for execution of an instrument or transaction
- (xxviii) to enter into any agreement with the Central Government or the State Government or the Government of any other State or the University Grants Commission or any other authority for receiving grants:
- (xxix) to accept grants of money, securities or property of any kind on such terms as it may deem expedient:
 - (xxx) "to raise and borrow money on bonds mortgages, promissory notes

19 of 1925.

or other obligations or securities founded or based on all or any of the properties and assets of the University or without any securities and on such terms and conditions as it may think fit and to pay out of the funds of the University, all expenses incidental to the raising of money and to repay and redeem any money borrowed;

- (xxxi) to invest the funds of the University or the money entrusted to the University in or on such securities and in such manner as it may deem fit and from time to time transpose any investment;
- (xxxii) to make regulations for regulating the affairs and the management of the University;
- (xxxiii) to constitute fund for pensions, gratuity, insurance, provident fund which shall be governed by the provisions of the Provident Funds Act, 1925 as if such fund were a Government Provident Fund in such manner and subject to such conditions as may be prescribed by regulations, and to make such grants as it may think fit for the benefit of any employee of the University and to aid in support of the establishment of associations, institutions, funds and trusts calculated to benefit the employees and the students of the University;
- (xxxiv) to delegate all or any of its powers to the Director or any committee or sub-committee constituted by any authority of the University or to any one or more members of the General Council of the University or to any officer of the University; and
- (xxxv) to do all such other acts and things as the University may consider necessary, conducive or incidental to the attainment or promotion of the objects of the University.
- 8. (1) All recognised teachings in connection with the degrees, diplomas and certificates of the University shall be conducted, under the control of the Academic Council, by the teachers of the University in accordance with the syllabus prescribed by the regulations.

Teaching in University.

- (2) The courses and curricula of teaching, and the authorities responsible for organising such teaching shall be such as may be prescribed by the regulations.
- 9. (1) The Chief Justice of India shall be the Visitor of the University.

Visitor.

- (2) The Visitor shall have the right to cause an inspection, to be made by such person or persons as he may direct, of the University, its buildings, libraries and equipments, and of any institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the administration and finance of the University.
- (3) The Visitor shall give notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry.
- (4) The Visitor may address the Chairman and the Director with reference the result of such inspection or inquiry, and the Director shall communicate to the General Council the results. the views of the Visitor and the advice that may be tendered by the Visitor with regard to the action to be taken thereon.

- (5) The General Council shall communicate through the Director to the Visitor of such action, if any, as it proposes to take, or as has been taken, on the result of such inspection or inquiry.
- (6) Where the General Council does not take action to the satisfaction of the Visitor within the time limit fixed by the Visitor, the Visitor may after considering any explanation furnished or representation made by the General Council, issue such direction as he may think fit and the General Council shall comply with such direction.

Chairman.

(1) The Chairman of the General Council shall be an eminent person in the field of law, academic, industry, trade or commerce or public life. He shall be appointed by the State Government in consultation with the Visitor:

Provided that until the first Chairman is appointed by the State Government, the person functioning as the Chairman of the Indian Institute of Legal Studies Society registered under the Societies Registration Act, 1860 shall be the Chairman of the General Council;

(2) The Chairman shall hold office for a term of five years and he shall be eligible for reappointment to that office only for a further term of five years.

CHAPTER III

AUTHORITIES OF UNIVERSITY

University.

- Authorities of 11. The following shall be the authorities of the University:
 - the General Council:
 - the Executive Council: (b)
 - the Academic Council: (c)
 - (d) the Finance Committee; and
 - such other authorities as may be declared by the University by (e) regulation to be the authorities of the University.

General Council. The General Council shall be the apex authority of the University.

Constitution of General Council.

- The General Council of the University shall consist of the following members, namely :---
 - (a) the Visitor.
 - the Chairman,
 - the Director, (c):
 - the Attorney General of India, (d) .
 - one Judge of the Supreme Court of India nominated by the Visitor, (e)
 - (f) the Minister for Finance. State of Gujarat.
 - the Minister for Higher Education, State of Gujarat,
 - the Minister for Law, State of Gujarat,
 - (i) the Chief Justice, High Court of Gujarat,
 - two Judges of the High Court of Gujarat to be nominated by the

- (k) the Solicitor General of India,
- (l) any Additional Solicitor General of India to be nominated by the Attorney General of India.
- (m) the Advocate General, State of Gujarat,
- (n) the Chairperson of the University Grants Commission or his nominee from among the members of the University Grants Commission,
- (o) the Chairman, Bar Council of India,
- (p) the Chairman, Bar Council of Gujarat,
- (q) the Chairman, Gujarat State Law Commission,
- (r) the Director of Indian Institute of Management, Ahmedabad,
- (s) two members of the Executive Council as are not otherwise members of the General Council,
- (t) an eminent scholar to be nominated by the State Government,
- (u) two distinguished persons to be nominated by the State Government,
- (v) (i) the Chairman, Indian Institute of Legal Studies Society, and
 (ii) one member to be nominated by the Indian Institute of Legal Studies Society nominated by it from amongst its members,
- (w) two Vice-Chancellors of other Universities established by law in the State of Gujarat, by rotation to be nominated by the State Government,
- (x) two distinguished lawyers to be nominated by the Visitor,
- (y) two distinguished lawyers to be nominated by the Chief Justice of the High Court of Gujarat,
- (z) two distinguished educationalists to be nominated by the Director in consultation with the Visitor:

Provided that an employee of the University shall not be eligible for nomination under sub-clauses (x) and (z).

14. (1) The term of office of the members of the General Council shall be five years.

Term of office of members of General Council.

- (2) When a person becomes a member of the General Council by virtue of his office, he shall cease to be such member if he ceases to hold that office:
- (3) When a person is nominated as a member of the General Council, he shall cease to be such member if his nomination as such is withdrawn by the nominating body or person, as the case may be.
 - (4) A member of the General Council shall cease to be a member, if he,-
 - (a) tenders his resignation and such resignation is accepted; or
 - (b) becomes of unsound mind and stands so declared by a competent court: or
 - (c) becomes undischarged insolvent; or
 - (d) has been convicted of an offence involving moral turpitude: or
 - has accepted a full time appointment to the post other than the post of Director in the University.

- (5) A member of the General Council may, by writing addressed to the Chairman resign his office and such resignation shall take effect on the date it is accepted by the Chairman.
- (6) Any vacancy in the General Council shall be filled in by nomination of a person by the relevant authority and the person so nominated shall hold office for so long as the member in whose place he is nominated would have held office had the vacancy not occurred.

Powers of General Council.

- 15. The General Council shall have the following powers, namely:—
 - (a) to formulate and review the broad policies and programmes of the University and suggest measures for the development of the University;
 - (b) to direct the Executive Council to take such steps as are necessary for achieving the objects of the University;
 - (c) to consider and pass resolution on the annual report, financial estimates and audit reports on the accounts of the University;
 - (d) to appoint the Director;
 - (e) to exercise such other powers as it may deem necessary for the performance of functions and the administration of the University.

Meetings of General Council.

- 16. (1) The General Council shall meet at least once in a year. The meetings of the General Council shall be convened by the Director in consultation with the Chairman and the Visitor.
- (2) The Visitor shall preside over the meeting of the General Council. In absence of the Visitor, the Chairman shall preside over the meeting, and in absence of the Chairman, a member of the General Council nominated by him shall preside.
- (3) The Director shall cause to be laid before the meeting of the General Council, a report of the working of the previous year of the University, the annual statement of accounts together with the report of auditors thereon and the budget estimates and the income and expenditure for the next financial year.
- (4) The meeting of the General Council may be called by the Visitor or by the Chairman, either of his own or at the request of not less than ten members of the General Council.
- (5) The General Council shall meet at such time and place and with such period of notice and shall observe such rules of procedure in regard to transaction of business at its meeting (including the quorum at such meeting) as may be provided by the regulations.
- (6) If any urgent action is required, the Chairman may, with the approval of the majority of the members of the General Council, permit the business to be transacted by circulation among the members of the General Council. The report of the action so taken shall be placed before the next meeting of the General Council.

Executive Council.

- 17. (1) The Executive Council shall be the chief executive body of the University.
- (2) The powers of administration and management of the fund and property of the University shall vest in the Executive Council.

- 18. The Executive Council shall consist of the following members, namely:—
 - (a) the Director;

Constitution of Executive Council.

- (b) a member of the General Council, who is a Judge to be nominated by the Visitor;
- (c) the Chief Secretary to the Government of Gujarat or an officer not below the rank of the Secretary to Government of Gujarat to be nomineted by him;
- (d) the Secretary to the Government of Gujarat, Finance Department;
- (e) the Secretary to the Government of Gujarat, (Higher Education) Education Department;
- (f) the Secretary to the Government of Gujarat, Legal Department;
- (g) a member of the General Council to be nominated by the State Government;
- (h) a member of the General Council, who is a lawyer to be nominated by the Visitor;
- (i) a member of the General Council, who is an educationist to be nominated by the Visitor;
- (j) five Professors or Associate Professors of the University to be nominated by the Director, by rotation.
- 19. (1) The term of office of members of the Executive Council shall be hree years.

Term of office of members of Executive Council.

- (2) (a) When a person becomes a member of the Executive Council by virtue of his office, he shall cease to be such member if he ceases to hold his office.
- (b) When a person is nominated as a member of Executive Council, he shall ceased to be such member if his nomination of such membership is withdrawn by the nominating body or person, as the case may be.
 - (c) A member of the Executive Council shall cease to be a member if he,-
 - (i) tenders his resignation and such resignation is accepted;
 - (ii) becomes of unsound mind and stands so declared by a competent court; or
 - (iii) becomes undischarged insolvent: or
 - (iv) has been convicted of an offence involving moral turpitude; or (other than the Director or member of the Faculty) has accepted a full time appointment in the University.

- (3) A member of the Executive Council may, by writing addressed to the Chairman resign his office, and such resignation shall take effect on the date it is accepted by the Chairman.
- (4) Any vacancy in the Executive Council shall be filled in by nomination of a person by the relevant authority entitled to make the same and the person so nominated shall hold office so long as the member in whose place he is nominated would have held office had the vacancy had not occurred.

Powers and functions of Executive Council.

- **20.** The Executive Council shall have the following powers and perform the following functions, namely:—
- (1) to submit to the General Council, with its recommendations, of persons for appointment as a Director suggested by the Search Committee constituted in accordance with regulations made in this behalf;
- (2) to appoint Registrar, Librarian, Professors, Associate Professors, Assistant Professors and other members of the teaching staff, as may be necessary, on the recommendations of the Selection Committee:

Provided that the Executive Council shall not appoint teachers without considering the recommendation of the Academic Council with regard to numbers, qualifications and emoluments:

Provided further that it shall not be necessary for the Executive Council to obtain the recommendation of the Academic Council to appoint a person on the following posts, namely:—

- (a) any supernumerary post, or
- (b) Professor of eminence;
- (3) to create administrative and ministerial posts, to determine the number and emoluments of such posts, to specify qualifications for such posts, and to appoint persons to such posts on such terms and conditions of service as may be prescribed by regulations in this behalf, or to delegate the powers of appointment to such authority or officer as the Executive Council may, by resolution, specify either generally or specifically;
- (4) to grant, in accordance with the regulations, leave other than casual leave to any officer of the University and to make necessary arrangement for the discharge of the functions of such officer during his period of leave;
- (5) to manage and regulate the finance, accounts, investments, property, business and all other administrative affairs of the University and, for that purpose, to appoint such person or agency as it may think fit;
- (6) to invest any money belonging to the University, including any unapplied income, in such stock, funds, shares or securities, as it may think fit, or to invest in the purchase of immovable property;
- (7) to transfer or acquire any movable or immovable property on behalf of the University;
- (8) to enter into, vary, carry out or cancel contracts on behalf of the University and to appoint such officers as it may think fit for that purpose,
- (9) to provide buildings, premises, furniture, apparatus and other means required for carrying out the functions of the University:
- (10) to appoint examiners and moderators, to fix their fees, emoluments and allowances, in consultation with the Academic Council:
- (11) to select a common seal for the University and to provide for the custody of the seal: and

- (12) to exercise such other powers and to perform such other duties as may be conferred or imposed on it by or under this Act.
- 21. (1) The Executive Council shall meet at least once in four months.
- (2) The Director or in his absence, any member of the Executive Council nominated by him shall preside over the meeting of the Executive Council.

Meetings of Executive Council.

- (3) The Executive Council shall meet on notice, at such time and place and with such period of notice and shall observe such rules of procedure in regard to transaction of business at its meeting (including the quorum at such meeting) as may be provided by the regulations.
- (4) If any urgent action is required, the Director may, with the approval of the majority of the members of the Executive Council, permit the business to be transacted by circulation among the members of the Executive Council. The action so taken as approved by circulation shall be placed before the next meeting of the Executive Council.
- 22. The Executive Council may, by resolution, delegate to the Director or to a committee, such of its powers as it may deem fit, subject to the condition that the action so taken by the Director or such committee shall be placed at the next meeting of the Executive Council.

Delegation of powers by Executive Council.

23. The Academic Council shall be the academic body of the University. It shall have powers, subject to the provisions of this Act and the regulations, to control, regulate and maintain the standards of instruction, education and examination of the University and advice the Executive Council on academic matters. It shall exercise such other powers, and shall perform such other duties, as may be conferred or imposed upon it by this Act or the regulations.

Academic Council.

24. (1) The Academic Council shall consist of the following members, namely:—

Constitution of Academic Council.

- (a) the Director;
- (b) a member of the Bar Council of India to be nominated by the Chairman of the Bar Council of India;
- (c) a member of the Bar Council of Gujarat to be nominated by the Chairman of the Bar Council of Gujarat;
- a member of the law panel of the University Grants Commission to be nominated by the Chairman of the Commission;
- (e) one Dean of law faculty of any other University established by Law in the State of Gujarat, by rotation to be nominated by the State Government;
- (f) two distinguished persons (other than employees of the University) teaching law to be nominated by the Director;
- (g) an eminent jurists to be nominated by the State Government:
- (h) (i) all Professors of the University: and
 - (ii) a representative each of the Associate Professors and the Assistant Professors of the University.
- (2) The term of the members shall be three years.

Powers and functions of Academic Council.

- 25. Subject to the provisions of this Act and the regulations, the Academic Council shall have the following powers and perform the following functions, namely:—
- (1) to report on any matter referred to or delegated to it by the General Council or the Executive Council;
- (2) to make recommendations to the Executive Council with regard to the creation, abolition or classification of teaching posts in the University and qualifications; emoluments and the duties attached thereto;
- (3) to formulate, modify or revise schemes for the organisation of the faculties, schools, centres or specialised institutes, and to assign to them their respective subjects and also to report to the Executive Council as to the expediency of the abolition or sub-division of any faculty, school, centre or specialised institute, or the combination of one with another;
- (4) to make arrangements by regulations for the instruction and examination of persons other than those enrolled in the University;
 - (5) to promote research and to require reports on such research;
 - (6) to consider proposals submitted by the faculties;
- (7) to recognise diplomas and degrees of other Universities and institutions and to determine their equivalence in relation to the diplomas and degrees of the University;
- (8) to fix, subject to any conditions laid by the General Council, the time, mode and conditions of competition for fellowships, scholarships and other prizes, and to award the same;
- (9) to make recommendations to the Executive Council in regard to the appointment of examiners and fixation of their fees, emoluments and travelling and other expenses;
- (10) to make arrangements for the conduct of examinations and to fix dates for holding such examinations;
- (11) to declare the results of examinations, or to appoint committees or officers for declaration of such result, and to make recommendations regarding the conferment or grant of degrees, honours, diplomas, certificates, titles and marks of honour;
- (12) to award stipends, scholarships, medals and prizes and to make other awards in accordance with the regulations and on such conditions as may be attached to the awards;
- (13) to perform, in relation to academic matters, all such duties and to do all such acts as may be necessary for carrying out the provisions of this Act and the regulations.

Meetings of Academic Council.

- 26. (1) The Academic Council shall meet as many times as may be necessary, but at least once in six months.
- (2) The Director or in his absence any member of the Academic Council nominated by him shall preside over at the meeting of the Academic Council.
- (3) The Academic Council shall meet at such time and place and with such period of notice and shall observe such rules of procedure in regard to transaction of its business at its meeting (including the quorum at such meeting) as may be provided by regulations.
- (4) If any urgent action is required, the Director may, with the approval of the majority of the members of the Academic Council, permit the business

to be transacted by circulation among the members of the Academic Council. The action so taken as approved by circulation shall be placed before the next meeting of the Academic Council.

27. Where any authority of the University is not constituted, the Director with the approval of the Chairman, may discharge all or any of the functions of such authority and, for that purpose may exercise any power of such authority till such authority is constituted.

Transitory Powers of Director.

CHAPTER IV

COMMITTEES

28. (1) The Finance Committee shall consists of the following members, namely:—

Finance Committee.

- (a) the Chairman
- (b) the Director,
- (c) two members to be nominated by the Executive Council from amongst its members,
- (d) one member to be nominated by the State Government from amongst the members of the Executive Council, who is an officer of the State Government.
- (2) The term of member of the Finance Committee shall be three years.
- (3) A member shall cease to be a member of the Finance Committee, if he ceases to be a member of the Executive Council or if he ceases to hold the post of the Chairman.
- 29. (1) The Finance Committee shall have following powers and discharge the following functions, namely:-

Powers and functions of Finance Committee.

- (a) to examine and scrutinise the annual budget of the University and to make recommendations on financial matters to the Executive Council;
- (b) to consider all proposals for new expenditure and to make recommendations to the Executive Council;
- (c) to consider the periodical statements of accounts and to review the finances of the University from time to time, to consider reappropriation statements and audit reports, and to make recommendations thereon to the Executive Council;
- (d) to give views and to make recommendations to the Executive Council on any financial matters affecting the University, either on its own motion or on reference from the Executive Council or the Director.
- (2) The Finance Committee shall meet at least once in every six months. Three members of the Finance Committee shall form the quorum for a meeting.
- (3) The Chairman or in his absence, the Director shall preside over the meetings of the Finance Committee.
- 30. (1) The Executive Council shall constitute Selection Committees for making recommendations for appointment to posts of Professor, Associate Committee. Professor and other teachers of the University.
- (2) The Selection Committee shall consist of the following members. namely:—

- (a) the Director;
- (b) the Head of the Department concerned, if any, who is not lower in rank than that of the post for which selection is to be made;
- (c) (i) where an appointment is to be made by any academic post, three experts nominated by the Director from amongst a panel of names recommended by the Academic Council;
 - (ii) where an appointment is to be made to any administrative post, three experts in the fields of university administration nominated by the Director from amongst a panel of names recommended by the Executive Council.
- (3) Where an endowment from a donor is accepted by the University for instituting a Chair, the donor may be co-opted as a member of the Selection Committee for the purpose of filling in that post.
- (4) The meeting of the Selection Committee shall be convened by the Director whenever necessary. The Director or in his absence, a member of Selection Committee nominated by him shall preside over the meeting of the Selection Committee. Three members of the Selection Committee of whom one shall be an expert, shall form the quorum for a meeting of the Committee.

Standing Committees and adhoc committees. 31. Subject to the provisions of this Act and the regulations, the Executive Council may, by resolution, constitute such Standing Committees or appoint ad hoc committees of such persons and for such purposes and with such powers as the Executive Council may think fit for exercising any power or discharging any function of the University or inquiring into, and reporting or advising upon, any matter relating to the University.

CHAPTER V

OFFICERS OF THE UNIVERSITY

Officers of University.

- 32. The following shall be the officers of the University:
 - (a) the Director,
 - (b) the Heads of the Departments, Schools and Centres,
 - (c) the Registrar, and
 - (d) such other officers of the University as may be declared by the regulations to be the officers of the University.

Director.

- 33. (1) The Director shall be appointed by the General Council after considering the recommendations of the Executive Council and in consultation with the Visitor.
- (2) The terms and conditions of the appointment of the Director shall be such as may be prescribed by the regulations:
- Provided that the first Director shall be appointed by the State Government in consultation with the Chairman.
- (3) The Director, subject to the specific and general directions of the Executive Council, shall exercise all the powers of the Executive Council for management and administration of the University.
- (4) The Director shall hold office for a term of five years. He shall be eligible for re-appointed for a further term of five years only.

- (5) The Director shall—
- ensure that the provisions of this Act and the regulations are duly observed, and he shall have all such powers as are necessary for that purpose;
- (b) convene the meetings of the General Council, the Executive Council, and the Academic Council and shall perform such other functions as may be necessary to give effect to the provisions of this Act;
- (c) have all such powers as are necessary for proper maintenance of discipline in the University.
- (6) When in the opinion of the Director, an emergency requires immediate action, he shall take such action as he deems necessary and shall report the action so taken for confirmation of the authority, to the next meeting which, in the ordinary course, would have dealt with that matter.
- 34. (1) Each of the Departments of the University shall have a Head of the Department.

Head of Departments and Schools.

- (2) The powers, functions, appointments and the conditions of service of the Heads of Departments shall be such as may be prescribed by the regulations.
- 35. (1) The Registrar shall be appointed by the Executive Council and shall be a whole time officer of the University.

Registrar

- (2) The terms and conditions of the appointment of the Registrar shall be such as may be prescribed by the regulations.
- (3) The Registrar shall be the *ex-officio* Secretary to the Executive Council and the Finance Committee, but he shall not be considered to be a member of any of these authorities.
 - (4) The Registrar shall—
 - (a) comply with all directions and orders of the Executive Council and the Director;
 - (b) be the custodian of the records, common seal and such other property of the University as the Executive Council may direct;
 - (c) exercise such powers and perform such functions as may be prescribed by the regulations.
- (5) When the post of the Registrar is vacant, the Director may authorise any officer of the University to exercise such powers and perform such functions of the Registrar, as he thinks fit.
- 36. The terms and conditions of service (including contract service) and the redressal of grievances relating thereto, of teachers, officers and employees of the University shall be such as may be prescribed by the regulations.

Terms and conditions of employees.

37. The University shall make provisions for the benefit of its officers, teachers, employees and other servants in such matters as insurance, pension, provident fund or other benefits as it may deem fit. in such manner and subject to such conditions as may be prescribed by the regulations.

Insurance, pension and provident fund.

CHAPTER VI

FINANCE

University Fund.

Annual

financial

estimates.

accounts and

- 38. (1) The University shall establish a fund to be called the University Fund.
- (2) The following shall form part of, or be paid into, the University Fund, namely:-
 - (a) all contributions or grants made by the State Government, the Central Government, the Bar Council of India, the Bar Council of Gujarat and the University Grants Commission;
 - The income of the University from all sources including income from fees and charges;
 - all income or moneys from trusts, bequests, donations, endowments, subventions and other grants.
- (3) The University Fund shall, at the discretion of the Executive Council, be kept in a Scheduled Bank as defined in the Reserve Bank of India Act, 1934, or in a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or may be invested in such securities authorized by the Indian Trusts Act, 1882.

II of 1934.

5 of 1970. 40 of 1980. 2 of 1882.

- (4) The University Fund may be expended for such purpose of the University and in such manner, as may be prescribed by regulations.
- (1) The annual accounts of the University shall be prepared under the directions of the Executive Council.
- (2) The Executive Council shall prepare, before such date as may be prescribed by the regulations, the annual financial estimates for the ensuing year and place the same before the General Council.
- (3) Where an expenditure in excess of the amount provided in the budget is required to be incurred, the Executive Council may, for reasons to be recorded in writing, incur expenditure subject to such conditions and restrictions as may be prescribed by the regulations and a report of such excess expenditure shall be made to the General Council at its next meeting.
- (4) The accounts of the University shall be audited by the auditors appointed by the Executive Council:

Provided that the State Government may, whenever it considers necessary, direct that audit of the accounts of the University, including the institutions managed by it, shall be audited by such auditors as it may specify.

- (5) The accounts together with the audit report shall be placed before the Executive Council and shall also be submitted to the State Government.
- (6) The annual accounts and the Financial Estimates shall be considered by the General Council at its annual meeting. The General Council may pass resolutions with reference thereto and communicate the same to the Executive Council, which shall take them into consideration and take such action thereon as it thinks fit. The Executive Council shall inform the General Council at its next meeting of the action taken by it or its reasons for taking no action.

Annual report 40. (1) The Executive Council shall prepare the annual report containing report. 2001-2001 such particulars as the General Council may specify, covering each financial year, and shall be submitted to the General Council on or before such date as may be prescribed by regulations. The General Council shall consider such report and may pass resolutions thereon and the Executive Council shall take

such action in accordance with the resolution. The action taken by the Executive Council or if no action is taken, the reasons for taking no action shall be communicated to the General Council at its meeting.

(2) The Copy of the annual report along with the resolution of the General Council thereon shall be submitted to the State Government. The State Government shall lay the same before the State Legislature at its next session.

CHAPTER VII

ENROLMENT AND DEGREE

41. No student shall be enrolled as a student of the University, unless he possesses such qualifications as may be prescribed by the regulations.

Qualification for admission of students.

42. A student of the University shall study on such terms and conditions as may be prescribed by the regulations.

Residence of students.

43. The General Council may, on the recommendation of not less than twomards of members of the Academic Council, confer by resolution, honorary degree or academic distinction, on a person who has eminent attainment and position.

Honorary degree.

44. (1) The General Council may, on the recommendation of the Executive Council, withdraw any distinction, degree, diploma or privilege conferred on, or granted to, any person who has been convicted by a court of law for an offence involving moral turpitude or if he has been guilty of gross misconduct, by a resolution passed by majority of the total membership of the General Council and by a majority of not less than two-thirds of the members of the General Council present and voting.

Withdrawal of degree or diploma.

- (2) No action under sub-section (1) shall be taken against any person unless he has been given an opportunity to show cause against the action proposed to be taken.
- (3) The resolution so passed by the General Council shall take effect immediately and the copy of the same shall be sent to the person concerned.
- 45. (1) The Director shall be the final authority for maintenance of discipline among the students of the University. The directions given by the Director in this behalf shall be complied with by the Heads of Departments, Schools, Hostels and Institutions.

Discipline among students.

(2) Notwithstanding anything contained in sub-section (1), the Executive Council may, on the report of the Director, impose the punishment of debarring a student from an examination or rustication from the school or a hostel or an institution:

Provided that no such punishment shall be imposed without giving the student concerned a reasonable opportunity to show cause against the action proposed to be taken against him.

CHAPTER VIII

SUPPLEMENTARY PROVISIONS

46. (1) The Executive Council may make regulations consistent with the provisions of this Act to provide for the administration and management of the University.

Regulations.

(2) The Executive Council shall not make, amend or repeal any regulation affecting all or any of the following matters without the prior concurrence of

the Academic Council, —

- (a) the determination of authorities for organizing teaching relating to syllabus and academic programmes;
- (b) the withdrawal of degrees, diplomas, certificates and other academic distinctions;
- the establishment and abolition of Faculties, Departments, and specialised schools, centres of learning and research, and halls of residence;
- (d) the institution and award of fellowships, scholarships, studentships, exhibitions, medals and prizes;
- (e) conditions and modes of appointment of examiners, conduct or standard of examinations and course of study;
- (f) modes of enrolment or admission of students;
- (g) examinations of other University to be recognized as equivalent to University examinations.
- (3) The Academic Council may propose to the Executive Council to make regulations on all or any of the matters specified in clauses (a) to (g) and matters incidental or related thereto.
- (4) Where the Executive Council has rejected any regulation proposed by the Academic Council, the Academic Council may appeal to the Visitor, and the Visitor may, by order, direct that the proposed regulation may be laid before the next meeting of the General Council for its approval and that pending such approval of the General Council, such regulation shall have effect from such date as may be specified in the order:

Provided that where the regulation is not approved by the General Council at such meeting, it shall cease to have effect.

- (5) (i) All regulations made by the Executive Council shall be submitted to the General Council and to the Visitor for approval;
- (ii) The General Council may, by resolution, approve the regulations;
- (iii) The Visitor may approve the regulation and the regulation so approved shall remain in force till the date on which it is approved or disapproved by the General Council.

Execution of contracts.

47. All contracts relating to the management and administration of the University shall be expressed to be made by the Executive Council and such contracts shall be executed on behalf of the Executive Council by the Director when the value of the contract is more than twenty lakhs of rupees and by the Registrar when its value does not exceed twenty lakhs of rupees.

Appointment of Review Commission.

- **48.** (1) The Visitor shall, at least once in every five years, constitute a Commission to review the working of the University and to make recommendations.
- (2) The Commission shall consist of not more than three eminent educationists, one of whom shall be the Chairman of such Commission, appointed by the Visitor in consultation with the State Government.
- (3) The terms and conditions of appointment of the members shall be such as may be determined by the Visitor.
- (4) The Commission shall, after holding such enquiry as it deems fit, make its recommendation to the Visitor.

(5) The Visitor may take such action on the recommendations as he deems fit.

XLV of 1860.

49. Every officer and employee of the University shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Officers and employees to be public servant.

50. No act or proceedings of any authority of the University or body shall be invalid on the grounds merely of the existence of any vacancy in or any defect in constitution of such authority or body.

Proceedings not invalidated by vacancies.

51. No suit, shall be instituted against or other legal proceedings shall lie against or no damages shall be claimed from, the University, the authority or officer of the University, in respect of anything which is in good faith done or purported to have been done in pursuance of this Act or the regulations.

Protection of action taken in good faith.

52. Notwithstanding anything in this Act or the regulations, whenever the University receives funds from any Government, the University Grants Commission or other agencies sponsoring a scheme to be executed by the University,—

Sponsored scheme.

- the amount received shall be kept by the University in separate account and shall be utilised for the purpose of the scheme only; and
- (b) the staff required to execute such scheme shall be recruited in accordance with the terms and conditions stipulated by the sponsoring organization.
- 53. If any difficulty arises in giving effect to the provisions of this Act or the regulations, the Visitor or the Director as directed by the Visitor, may, by order or as occasion requires, do anything consistent, so far as may be, with the provisions of this Act and the regulations, which appear to him to be necessary or expedient for the purpose of removing the difficulty. Every such order shall have effect as if such action had been taken under this Act or the regulations:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

STATEMENT OF OBJECTS AND REASONS

Since long it was felt that there is a genuine need to create a sound infrastructure in the State of Gujarat to promote education of law of international standard. It was also felt that such education would ensure substantial flow of professionally trained manpower to cater to the needs of the judiciary and legal profession.

Moreover, it has been recommended by the Committee appointed by the Chief Justices' Conference on Legal Education and Training, 1993, to establish, in each State an institution on the model of a National Law School of India University at Bangalore. In the All India Law Minister's Conference, 1995, it was also resolved that there should be such school in each State. With a view to improving the quality of legal education, it is considered necessary to establish a national level institute of excellence of higher learning of law in the State.

The following notes on clauses explain the important provisions of the Bill:—

- Clause 2.— This clause difines certain terms used in the Bill.
- Clause 3.— This clause provides for establishment and incorporation of the University.
- Clause 5.— This clause provides the objects of the University.
- Clause 7.— This clause provides for the powers and functions of the University.
- Clause 9.— This clause provides for the Visitor of the University and his right to cause an inspection or inquiry.
- Clause 10.— This clause provides for the appointment and term of office of the Chairman.
- Clause 11.— This clause provides different authorities of the University.
- Clause 13.— This clause provides for constitution of the General Council.
- Clause 14.— This clause provides for the term of office of the members of the General Council and eventualities for ceasation to be member and any vacancy to be filled in.
- Clause 15.— This clause provides for the powers of the General Council.
- Clause 16.— This clause provides for the meeting of the General Council.
- Clause 18. This clause provides for the constitution of the Executive council.
- Clause 19.—This clause provides for the term of office of the members of the Executive Council and eventualities for ceasation to be a member and any vacancy to be filled in.
- Clause 20.— This clause provides for the powers and functions of the Executive Council.
- Clause 21. This clause provides for the meeting of the Executive Council.
- Clutine 22.— This clause empowers the Executive Committee to delegate its' power to the Director or to a Committee as it deems fit.

Clause 24.— This clause provides for the constitution of Academic Council.

Clause 25.—This clause provides for the powers and functions of Academic Council.

Clause 26. — This clause provides for the meeting of Academic Council.

Clause 27.—This clause provides for the transitory powers of the Director to discharge all or any of the functions and powers of the authority until it is constituted.

Clauses 28 and 29.— These clauses provide for constitution of Finance Committee and its powers and functions.

Clause 30.—This clause provides for constitution of the Selection Committee for making recommendations for appointment to the posts of Professor, Associate Professor and other teachers of the University.

Clause 31.—This clause empowers the Executive Council to constitute Standing Committees or to appoint adhoc committee with its powers and functions.

Clause 32.— This clause provides for the officers of the University.

Clause 33.—This clause provides for the terms and conditions for appointment of the Director and its powers.

Clause 34.— This clause provides for the Head of the Departments of the University and its powers and functions.

Clause 35.— This clause provides for the terms and conditions for appointment of the Registrar and its power.

Clauses 36 and 37.—These clauses provide for the terms and conditions of service of the teachers, officers and employees of the University and also provide for the matters of their benefit such as insurance, pension or provident fund as the University deems fit.

Clause 38:— This clause provides for University fund and the manner in which it shall be expended.

Clauses 39 and 40.— These clauses provide for annual accounts, financial estimates and annual report of the University.

Clauses 41, 42, 43 and 44.— These clauses provide for the qualification for admission of student in the University, terms and conditions subject to which student shall undertake study, conferring of honorary degree or academic distinction and withdrawal of any distinction, degree, diploma or previlege conferred or granted.

Clause 45.— This clause provides for discipline to be maintined by students of the University.

Clause 46.—This clause empowers the Executive Council to make regulations for the administration and management of the University.

Clause 48.—This clause provides for constitution of Review Commission by the Visitor to review the working of the University and to make recommendations.

Clause 53.— This clause provides for the powers of the Visitor on the Director to do any thing consisting with the provisions of the Act and regulation for the purpose of removing difficulty which has arison in giving effect to the provisions of the Act or regulation.

ASHOK BHATT

FINANCIAL MEMORANDUM

Sub-clause (2) (a) of clause 38 of this Bill enables the State Government to make contributions or grants to the University which are to be carried to the fund of the University. In the budget for the year 1999-2000, an amount of ten crore rupees has been provided to the Indian Institute of Legal Studies Society as a corpus fund for the proposed Gujarat National Law University. In these circumstances, clause 38 of this Bill, when enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

ASHOK BHATT

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers in the following respects:-

- Clause 1.—Sub-clause (2) of this clause empowers the State Government to appoint by notification in the *Official Gazette*, the date on which the remaining provisions of the Act shall come into force.
- Clause 4.— This clause empowers the State Government, to specify by notification in the Official Gazette, the place of headquarters of the University
- Clause 7.—(i) sub-clause (iv) of this clause empowers the Executive Council to prescribe by regulations, such conditions subject to which the University may hold examination and confer degrees, diplomas, etc:
- (ii) sub-clause (v) of this clause empowers the Executive Council to prescribe by regulations, the manner in which the University shall confer honorary degrees or other distinctions;
- (iii) sub-clause (xviii) of this clause empowers the Executive Council to determine the terms and conditions subject to which the University may co-operate with any other organisation in the matter of education, training and research in law, jurisprudence, justice, legislation, parliamentary practice and allied subjects;
- (iv) sub-clause (xxxiii) of this clause empowers the Executive Council to prescribe by regulations the manner and conditions subject to which pension, provident fund, gratuity and insurance fund shall be constituted by the University for the benefit of its employees and student and other institutions of University.
- Clause 8.—(i) Sub-clause (1) of this clause empowers the Executive Council to prescribe by regulations the syllabus of all recognised teachings in connection with the degrees, diplomas and certificates which shall be conducted under the control of the Academic Council:
- (ii) sub-clause (2) of this clause empowers the Executive Council to prescribe by regulations the courses and curriculum of teaching and the authorities responsible for organising for teaching.
- Clause 11.—Item (e) of this clause empowers the Executive Council to declare by regulations such other authorities to be the authorities of the University.

- Clause 16.—Sub-clause (5) of this clause empowers the Executive Council to prescribe by regulations the time and place, period of notice, rule of procedure for conduct the meeting of General Council.
- Clause 20.—(1) Sub-clause (1) of this clause empowers the Executive Council to make the regulations for constitution of Search Committee to suggest names for appointment of a person as a Director;
- (ii) sub-clause (3) of this clause empowers the Executive Council to prescribe by regulations, the terms and conditions of service of the administrative and ministerial posts, number and emoluments of such posts, specifying qualifications and method of recruitment and delegation of powers of appointment of Executive Council to other authorities for creating, determing number and emoluments;
- (iii) sub-clause (4) of this clause empowers the Executive Council to prescribe regulations for grant of leave to any officer of the University and for discharge of the functions of such officer during his leave.
- Clause 21.—Sub-clause (3) of this clause empowers the Executive Council provide by regulations the time, place, period of notice and rules of procedure transaction of business at the meeting of Executive Council.
- Clauses 23 and 25.—These clauses empower the Executive Council to make regulations subject to which the Academic Council shall control, regulate and maintain the standards of instructions, education and examination of the University and exercise such other powers and perform such other duties referred to in clause 25.
- Clause 26.—Sub-clause (3) of this clause empowers the Executive Council to provide by regulations the time, place, and period of notice and rules of procedure for transaction of business at the meeting of Academic Council.
- Clause 31.— This clause empowers the Executive Council to make regulations for constitution of Standing Committee of ad-hoc committees of such persons for such purpose and with such powers as it deems fit.
- Clause 32.— Item (d) of this clause empowers the Executive Council to make regulations to declare the other officers of the University to be the officers of the University.
- Clause 33.—Sub-clause (2) of this clause empowers the Executive Council to prescribe by regulations the terms and conditions of the appointment of the Director.
- Clause 34.—Sub-clause (2) of this clause empowers the Executive Council to prescribe by regulations the powers, functions, appointments and conditions of service of the Heads of Departments.
- Clause 35.—(i) Sub-clause (2) of this clause empowers the Executive Council to prescribe by regulations the terms and conditions of the appointment of the Registrar;
 - (ii) item (c) of sub-clause (4) of this clause empowers the Executive Council to prescribe by regulations the powers and functions of the Registrar.
- Clause 36.— This clause empowers the Executive Council to prescribe by regulations the terms and conditions of service and redressal of grievances relating thereto of teachers, officers and employees of the University.

- Clause 37.— This clause empowers the Executive Council to prescribe by regulations to provide for the benefit of its officers, teachers and employees and other servants of the University for the matters such as insurance, pension, provident fund or other benefits and the manner and conditions thereof.
- Clause 38.— Sub-clause (4) of this clause empowers the Executive Council to make regulations, for the purpose and the manner in which the University Fund may be expended.
- Clause 39.—(i) Sub-clause (2) of this clause empowers the Executive Council to prescribe by regulations the date before which the financial estimates shall be prepared;
- (ii) sub-clause (3) of this clause empowers the Executive Council to prescribe by regulations the conditions and restrictions subject to which it may incur expenditure in excess of the amount provided in the budget.
- Clause 40.—Sub-clause (1) of this clause empowers the Executive Council to prescribe by regulations the date on or before which the Annual report shall be submitted to the General Council.
- Clause 41.—This clause empowers the Executive Council to prescribe by regulations, the qualifications for enrolment of the student in the University.
- Clause 42.—This clause empowers the Executive Council to prescribe by regulations the terms and conditions subject to which student shall study in the University.
- Clause 46.—This clause empowers the Executive Council to make regulations consistent with the provisions of Act to provide for the administration and management of the University, and to make regulations for all or any of the matters specified in sub-clause (2) with prior concurrence of the Academic Council.

The delegation of the legislative powers as aforesaid is necessary and is of a normal character.

Dated the 3rd March, 2003.

ASHOK BHATT.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 3rd March, 2003. Secretary to the Government of Gujarat. Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.





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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE NIRMA UNIVERSITY OF SCIENCE AND TECHNOLOGY BILL, 2003.

GUJARAT BILL NO. 13 OF 2003.

A BILL

to provide for the establishment of the Nirma University of Science and Technology, Ahmedabad, Gujarat by law and to confer the status of a University thereon and for matters connected therewith or incidental thereto.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Nirma University of Science and Technology Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Definitions. 2. In this Act, unless the context otherwise requires, -

- (a) "Academic Council" means the Academic Council of the University constituted under section 14;
- (b) "Board " means the Board of Governors of the University constituted under section 10;
- (c) "Chairman" means the Chairman of the Board appointed under section 11;
- (d) "Deans" mean the Deans of the University appointed under section 21;
- (e) "Director" means the Director of the University appointed under section 18,
- (f) "Executive Registrar" means Executive Registrar of the University appointed under section 20;
- (g) "Finance Committee" means Finance Committee of the University constituted under section 16;
- (h) "Foundation" means the Nirma Education and Research
 Foundation Ahmedabad;
- (i) "Patron Trustee" means the Patron Trustee of the Nirma Education and Research Foundation, Ahmedabad;
- "President" means the President of the University appointed under section 7;
- (k) "prescribed" means prescribed by the regulations;
- (I) "Regulations" means the Regulations of the University made under section 32;
- (m) "Society" means the Nirma Education and Research Foundation, Ahmedabad, a society registered under the Societies Registration Act, 1860;

XXI of 1860.

(n) "Trust" means the Nirma Education and Research Foundation, Ahmedabad registered under the Societies Registration Act, 1860 and the Bombay Public Trust Act, 1950;

XXI of 1860. Bom. 29 of 1950.

- (o) "University" means the Nirma University of Science and Technology, Ahmedat ad, Gujarat, a University established under section 3.
- 3. (1) There shall be established a University by the name of "The Nirma University of Science and Technology, Ahmedabad, Gujarat".
- Establishment and incorporation of University.
- (2) The President, the Board, the Academic Council, the Director, the Dean, the Executive Registrar and all other persons who may hereafter become such officers or members so long as they continue to hold such office or membership, are hereby constitute a body corporate by "The Nirma University of Science and Technology, Ahmedabad, Gujarat".
- (3) The University shall function as a non-affiliating University established under this Act and it shall not affiliate any other college or Institute for the award conferment of degree, diploma and certificate of its degree to the students admitted therein.
- (4) The University shall not have any grant in aid or other financial assistance from the Central Government, any State Government, University Grants Commission, All India Council For Technical Education or any other authority or institutions of the Central Government or any State Government.
- (5) The University shall be a body corporate by the name aforesaid, having perpetual succession and common seal with power, subject to the provisions of this Act, to acquire and hold property, to contract and shall, by the said name, sue and be sued.
- (6) In all suits and other legal proceedings by or against the University, the pleadings shall be signed and verified by the Executive Registrar and all processes in such suits and proceedings shall be issued to, and served on, the Executive Registrar.
- (7) The headquarters of the University shall be at Ahmedabad, Gujarat.

Objects of the University.

- 4. The objects of the University shall be to develop the knowledge of science and technology for the advancement of mankind. The objects of the University shall be as follows, namely:-
- to disseminate, create and preserve knowledge and understanding by teaching research, training and extension activities by effective demonstration and influence of its corporate life on society in general;
- to create centres of excellence for providing knowledge, education, training and research facilities of high order in the field of science, technical and other related professional education as per its current status and such other manner as may develop in future, including continuing education;
- (iii) to develop patterns of teaching a Certificate/Diploma, Undergraduate, Post-graduate and Doctoral level and to maintain a high standard of education and its applications; to create capabilities for upgrading science and technology infrastructure to the global standards;
- (iv) to develop training facilities in higher education including professional education and allied fields; to provide for interrelationships for national and global participation in the field of science and technology and its allied fields;
- (v) to function as a learning resource centre;
- (vi) to provide for arrangement for national and global participation in the field of higher and professional education including technical education; and
- (vii) to establish close linkage with the industry to make teaching, research and training at the university relevant to the needs of the economy, at national and global level.

5. (1) No person shall be excluded from any office of the University or from membership of any of its authorities or from admission to any degree, diploma or other academic distinction or course of study on the sole ground of sex, race, creed, caste, class, place of birth, religious belief or political or other opinion.

University open to all irrespective of sex, religion, class, creed or opinion.

- (2) It shall not be lawful for the University to impose on any person any test whatsoever relating to sex, race, creed, caste, class, place of birth, religious belief or profession of political or other opinion in order to entitle him to be admitted as a teacher or a student or to hold any office or post in the University or to qualify for any degree, diploma or other academic distinction or to enjoy or exercise any privileges of the University or any benefaction thereof.
- 6. Subject to the provisions of this Act, the University shall exercise the following powers and perform the following functions, namely:-

Powers and functions of University.

- to administer and manage the University and such centres for research, education and instruction as are necessary for the furtherance of the objects of the University;
- (ii) to provide for instruction, training and research in such branches of knowledge or learning pertaining to science and technology and allied areas and for the advancement and dissemination of science and technology and allied areas;
- (iii) to conduct innovative experiments in new methods and technologies in the field of science and technology in order to achieve international standards of such education, training and research;
- (iv) to prescribe courses and curricula and provide for flexibility
 in the education system and delivery methodologies
 including electronic and distance learning;
- (v) to hold examinations through electronic mode also and confer degrees, diplomas or grant certificates, and other academic distinctions or titles on persons subject to such

conditions as the University may determine, and to withdraw or cancel any such degrees, diplomas, certificates, or other academic distinctions or titles in the manner prescribed by the Regulations;

- (vi) to confer honorary degrees or other distinctions in the manner prescribed by the Regulations;
- (vii) to establish such special centers, specialized study centers or other units for research and instruction as are, in the opinion of the University, necessary for the furtherance of its objects;
- (viii) to provide for printing, reproduction and publication of research and other works and to organise exhibitions;
- (ix) to sponsor and undertake research in all aspects of science and technology and allied areas;
- to collaborate or associate with, advise, administer, control, develop, maintain, or take over by way of merger or otherwise, any educational institution with like or similar objects;
- (xi) to develop and maintain linkages with educational or other institutions in any part of the world having objects wholly or partially similar to those of the University, through exchange of teachers and scholars, and generally in such manner as may be conducive to their common objects;
- (xii) to develop and maintain relationships with teachers, researchers, and domain experts in science and technology and allied areas in any part of the world for achieving the objects of the University;
- (xiii) to regulate the expenditure and to manage the finances and to maintain accounts of the University;
- (xiv) to receive funds from industry, national and international organisations or any other source as gifts, donations,

benefactions, bequests and by transfers of movable and immovable properties, for the purposes and objects of the University;

- (xv) to establish, maintain and manage halls and hostels for the residence of students;
- (xvi) to supervise and control the residence and regulate the discipline of students of the University and to make arrangements for promoting their health and general welfare and cultural activities;
- (xvii) to fix, demand and receive or recover fees and such other charges as may be prescribed by the Regulations;
- (xviii) to institute and award fellowships, scholarships, prizes, medals and other awards;
- (xix) to purchase or to take on lease or accept as gifts or otherwise any land or building or works which may be necessary or convenient for the purpose of the University and on such terms and conditions as it may think fit and proper and to construct or alter and maintain any such building or works;
- (xx) to sell, exchange, lease or otherwise dispose of all or any portion of the properties of the University, movable or immovable, on such terms as it may think fit and consistent with the interest, activities and objects of of the University;
- (xxi) to draw and accept, to make and endorse, to discount and negotiate, Government of India and other promissory notes, bills of exchange, cheques or other negotiable instruments;
- (xxii) to raise and borrow money on bond, mortgages, promissory notes or other obligations or securities founded or based upon all or any of the properties and assets of the University or without any securities and upon such terms and conditions as it may think fit and to pay out of the funds of

the University, all expenses incidental to the raising of money, and to repay and redeem any money borrowed:

- (xxiii) to invest the funds of the University in or upon such securities and transpose any investment from time to time in such manner as it may deem fit;
- (xxiv) to execute conveyances regarding transfers, mortgages, leases, licenses, agreements and other conveyances in respect of property, movable or immovable including Government securities belonging to the University or to be acquired for the purpose of the University;
- (xxv) to admit the students for the courses offered by the University in the manner prescribed by the Regulations;
- (xxvi) to create academic, technical, administrative, ministerial and other posts and to make appointments thereto;
- (xxvii) to regulate and enforce discipline among the employees of the University and to provide for such disciplinary measures as may be prescribed by the Regulations;
- (xxviii) to institute professorship, associate professorship, assistant professorship, readerships, lecturerships, and any other teaching, academic or research posts and to prescribe qualifications for them;
- (xxix) to appoint persons as professors, associate professors, assistant professors, readers, lecturers or otherwise as teachers and researchers of the University;
- (xxx) subject to the provisions of this Act and regulations, any officer or authority of the University may, by order, delegate his or its powers except the power to make regulations to any other officer or authority under his or its control and subject to the condition that the ultimate responsibility for the exercise of the power so delegated shall continue to vest in the officer or authority delegating them;

(xxxi) to do all such other acts and things as the University may consider necessary, conducive or incidental to the attainment or enlargement of all or any of the objects of the University.

President.

- 7. (1) The Patron Trustee of the Nirma Education and Research Foundation, Ahmedabad shall be the President of the University for life at his pleasure. He may at his pleasure designate any other permanent Trustee of the Trust to be the President of the University.
- (2) The President shall have, subjects to the provisions of this Act, power to cause an inspection or review to be made by such person or persons as he may direct, of the University, its buildings, libraries, equipment and systems and processes and of any institution or centre maintained by the University, and also of the examinations, teaching, research and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the administration and finances of the University.
- 8. The following shall be the authorities of the University, namely:-

Authorities of University.

- (a) the Board;
- (b) the Academic Council;
- (c) the Finance Committee; and
- (d) such other authorities as may be declared by the Regulations to be authorities of the University.
- 9. The following shall be the officers of the University, namely:-

Officers of University.

- (a) the Director,
- (b) the Deans,
- (c) the Executive Registrar, and ...
- (d) such other persons as may be declared by the Regulations to be officers of the University.

Board of Governors.

- 10. (1) The Board of Governors of the University shall consist of the following members, namely:-
 - (i) The President shall be the Chairman of the Board;
 - (ii) two representatives of the Trust;
 - (iii) Director of the University;
 - (iv) two Deans of the University, by rotation, to be nominated by the Director;
 - (v) Secretary to Government, Science and Technology Department, Government of Gujarat;
 - (vi) three experts academicians to be nominated by the President;
 - (vii) three experts representing other disciplines such as finance, legal, management, humanities to be nominated by the President; and
 - (Viii) two representatives of the Industries to be nominated by the President.
 - (2) The Executive Registrar shall be the Secretary of the Board.

Chairman of Board.

- 11. (1) The Chairman shall preside over at the meetings of the Board and at the convocations of the University.
- (2) The Chairman shall exercise such other powers and perform such other duties as may be assigned to him by this Act or the Regulations.

Powers and functions of Board.

- 12. (1) Subject to the provisions of this Act, the Board shall be responsible for the general superintendence, direction and control of the affairs of the University and shall exercise all the powers of the University, and shall have the power to review the acts of the Academic Council and the Finance Committee.
- (2) Without prejudice to the provisions of sub-section (1), the Board shall have the following powers and functions, namely:-
- to take decisions on question of policy relating to the administration and working of the University;

- (ii) to institute courses of study at the University;
- (iii) to make Regulations;
- (iv) to consider and approve the annual report and the annual accounts of the University for every financial year;
- (v) to invest monies and funds of the University and take decisions on the recommendations of the Finance Committee;
- (vi) to publish or finance the publication of studies, treaties, books, periodicals, reports and other literature and to sell or arrange for the sale as it may deem fit from time to time;
- (vii) to create or abolish posts of teachers and other employees of the University;
- (viii) to appoint such committees as it considers necessary for the exercise of its powers and the performance of its duties under this Act;
- (ix) to delegate any of its powers to the Director, Deans, Executive Registrar, or any other officer, employee or authority of the University or to a committee appointed by it; and
- (x) to exercise such other powers and perform such other functions as may be conferred or imposed upon it by this Act or Regulations and all such other powers for achieving the objects of the University.
- 13. (1) Save as otherwise provided in this section, the term of nominated members of the Board shall be three years from the date of nomination;

Term of office and vacancies among members of Board.

- (2) an *ex-officio* member shall continue so long as he holds the office by virtue of which he is such member;
- (3) any vacancy in the Board occurring before the next reconstitution or before the expiry of the prescribed period shall be filled by nomination of another person by the President;

- (4) a member nominated under sub-section (3) shall continue for the remainder of the term of a member in whose, place he is nominated:
- (5) an outgoing member shall be eligible for re-nomination for the next term;
- (6) a member may resign his office by writing under his hand addressed to the President but he shall continue in office until his resignation has been accepted by the President.

Academic Council.

- 14. (1) The Academic Council of the University shall consist of the following members, namely:-
 - (i) the Director of the University, ex officio, who shall be the Chairman of the Academic Council;
 - (ii) two academicians or professionals, to be nominated by the Board;
 - (iii) two external academicians or professionals in the area of science and technology, to be nominated by the Director;
 - (iv) two Deans of the University, by rotation to be nominated by the Director;
 - (v) one Professor from each discipline of the University,by rotation to be nominated by the Director; and
 - (vi) the Executive Registrar who shall be the non-member Secretary of the Council.
 - (2) The term of office of the members other than the ex-officio member shall be three years.
- 15. Subject to the provisions of this Act, and the Regulations, the Academic Council of the University shall have the following powers, namely:

Powers and functions of Academic Council.

- to exercise control and general regulation over the academic policies of the University and be responsible for the maintenance and improvement of standards of instruction, education and evaluation in the University;
- to consider matters of general academic interest either on its (ii) own initiative or on a reference from the Faculty of the University or the Board and to take appropriate action thereon;
- Regulations as are to recommend to the Board such (iii) consistent with this Act regarding the academic functioning of the University including discipline of students; and
- to exercise such other powers and perform such other (iv) duties as may be conferred or imposed upon it by the Regulations.

The Finance Committee shall consist of the following 16. members, namely:-

Finance Committee.

- the Director of the University ex-officio shall be the (i) Chairman of the Committee;
 - one Member of the Board to be nominated by the President; (ii)
 - one Dean of the University by rotation to be nominated by (iii) the Director;
 - one expert to be nominated by the President; and (iv)
 - the Executive Registrar shall be the non-member Secretary (v). of the Committee.
- The term of office of the members other than the ex-officio member shall be three years.

Powers and functions of Finance Committee.

- 17. Subject to the other provisions of this Act, the Finance Committee shall exercise the following powers and perform the following functions, namely:-
 - (i) to examine the annual accounts and annual budget estimates of the University and advise the Board thereon;
 - (ii) to review the financial position of the University from time to time;
 - to make recommendations to the Board on all financial policy matters of the University;
 - (iv) to make recommendations to the Board on all proposals involving raising of funds, receipts and expenditure;
 - (v) to provide guidelines for investment of surplus funds;
 - (vi) to make recommendations to the Board on all proposals involving expenditure for which no provision has been made in the budget or for which expenditure in excess of the amount provided in the budget has been incurred;
 - (vii) to examine all proposals relating to revision of scale, appraidation of the scale and those items which are not included in the budget, before they are placed before the Board; and
 - (viii) to exercise such other powers and perform such other functions as may be conferred or imposed upon it by the Regulations.

Director.

- 18. (a) The Director shall be appointed by the Board out of the panel of names recommended from time to time by the Committee consisting of the following members, namely:-
 - (i) an eminent technologist to be nominated by the President;
 - (ii) an eminent educationist to be nominated by the President; and

- (iii) one member of the Board to be nominated by the President.
- (h) The President shall designate one member as the Chairman of the Committee.
- (c) The term of office of the Director shall be determined by the Board for the period not exceeding five years.
- (d) Notwithstanding anything contained in clauses (a) and (c) of sub-section (1), the Director of the University holding the office at the commencement of this Act, shall be deemed to have been appointed as the first Director.
- (e) Where a vacancy in the office of Director occurs and it cannot be conveniently and expeditiously filled up in accordance with the provisions of clauses (a) and (c) of this section and if there is any emergency, the President, in consultation with the Board, may appoint any suitable person to be the Director and may, from time to time, extend the term for a period not exceeding one year;
- (f) The conditions of service of the Director, including salary, allowances, leave, pension and provident fund shall be such as may be prescribed by the Board and until so prescribed, shall be determined by the President.
- 19. (1) The Director shall be the Chief Executive and Academic Officer of the University. He shall preside over at the meetings of the Academic Council and Finance Committee.

Powers and duties of Director.

- (2) Without prejudice to the generality of the provision contained in subsection (1), the Director shall -
 - (i) exercise general supervision and control over the affairs of the University;
 - (ii) ensure implementation of the decisions of the authorities of the University;

- (iii) be responsible for imparting of instruction and maintenance of discipline in the University; and
- (iv) exercise such other powers and perform such other duties as may be assigned to him under this Act or the Regulations or as may be delegated to him by the Board or the President, as the case may be.
- (3) Where any matter is of urgent nature requiring immediate action and the same cannot be immediately dealt with by the Chairman or authority or body of the University empowered under this Act to deal with it, the Director may take such action as he may deem fit and shall forthwith report the action taken by him to the Chairman or authority or body of the University who or which, in the ordinary course, would have dealt with the matter:

Provided that if such authority or other body is of the opinion that such action ought not have been taken by the Director, it may refer the matter to the Chairman who may either confirm the action taken by the Director or annul the same or modify it in such manner as he thinks fit, and thereupon it shall cease to have effect or as the case may be, shall take effect in such modified form; so however, such modification or annulment shall be without prejudice to the validity of anything previously done by or under the orders of the Director.

- (4) Where the exercise of the power by the Director under sub-section (3) involves the appointment of any person, such appointment shall be confirmed by the competent authority empowered to approve such appointment, in accordance with the provisions of this Act and the Regulations, not later than six months from the date of order of the Director, otherwise the same shall cease to have effect on the expiration of a period of six months from the date of order of the Director.
- 20. (1) The Executive Registrar shall be appointed by the University in such manner and on such terms and conditions as may be prescribed by the Regulations.

Executive Registrar.

- (2) The Executive Registrar shall exercise the following powers and perform following duties, namely:-
 - he shall be responsible for the custody of records, common seal, the funds of the University and such other property of the University;
 - (ii) he shall place before the Board and other authorities of the University, all such information as may be necessary for transaction of its business;
 - (iii) he shall be responsible to the Director for the proper discharge of his functions;
 - responsible for the administration and services of the University and conduct the examinations and make all other arrangements necessary therefor and be responsible for the execution of all processes connected therewith;
 - (v) he shall attest and execute all documents on behalf of the University; and
 - (vi) he shall exercise such other powers and perform such other duties as may be assigned to him under this Act, the Regulations or as may be delegated to him by the Board or the Director.
- 21. (1) The Deans of the University shall be appointed by the Director, with the approval of the Chairman of the Board, from amongst the Faculty of the University.
- (2) The Deans shall assist the Director in managing the academic and other affairs of the University and shall exercise such powers and perform such functions as may be prescribed by the Regulations or be entrusted to them by the Director.

The Deans.

Permanent Endowment Fund of University.

The Trust shall place funds at the disposal of the University to be called the Permanent Endowment Fund of a sum of ten crores of rupees or a sum required for meeting the full operational expenditure of the University for three years, in long term interest bearing securities issued or guaranteed by the Central or State Government. On the termination of the involvement of the trust and after meeting the operational expenditure for three years, out of the Permanent Endowment Fund, if there is any unused balance that shall be paid back to the Trust.

Payment to University.

The Trust may pay to the University from time to time such sums of 23. money and in such manner as may be considered necessary for the exercise of its powers and discharge of its functions under this Act.

Funds of University.

- . (1). The University shall have its own funds consisting of -24.
 - all monies provided by the Trust; (i)·
 - all fees and other charges received by the University; (ii) .
 - all monies received by the University by way of (iii) donations, benifications. loans, gifts. grants. bequests or transfers;
 - (iv) all monies received by the University from the collaborating Industry in terms of the provisions of the Memorandum of Understanding between the University and the Industry, for establishment of sponsored chairs, fellowships and infrastructure facilities of the University; and
 - (v) all monies received by the University in any other manner or from any other source.
- All funds of the University shall be deposited in such banks or invested in such manner as the Board may decide on recommendation of the Finance Committee.

The funds of the University shall be applied towards the expenses (3)of the University including expenses incurred in the exercise of its powers and discharge of its functions.

(1) The University shall maintain proper accounts and other records, and prepare an annual statement of accounts, including the income and expenditure account and the balance sheet, in such form and in such manner as may be prescribed by the Regulations.

Accounts and audit.

- The University shall adopt a proper system of internal checks and (2)balances and controls in the discharge of its finance, accounting and auditing functions as may be prescribed by the Regulations.
- The Accounts of the University shall be audited not less than once per year by a statutory auditor who shall be a Chartered Accountant or a (3)firm of Chartered Accountants as defined in the Chartered Accountant Act, 1949 who shall be appointed by the Board.

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provident fund.

- The Accounts of the University certified by the person or firm so appointed or any other person authorised in this behalf together with the (4) audit report thereon shall be placed before the Board and the Board may issue such instructions to the University in respect thereof as it deems fit and the University shall comply with such instructions.
- (5) The Accounts of the University shall be audited by an internal auditor who shall be a Chartered Accountant or a firm of Chartered Accountants appointed by the Board, to ensure concurrent audit of all books of accounts, and such periodic internal audit reports shall be placed before the Board for review.
- The University shall prepare each year a report of its activities during the previous year and submit it in the form of an annual report to the Board for review and approval.
- (1) The University shall, with approval of the Board, constitute for Pension and the benefit of its officers, teachers and other employees, in such manner

and subject to such conditions, as may be prescribed by the Regulations, such schemes of pension, provident funds and insurance as it may deem fit, and also aid in establishment and support of the associations, institutions, funds, trusts and conveyance calculated to benefit the staff and the students of the University.

Where any such provident fund has been so constituted, the provisions of the Provident Funds Act, 1925, shall apply to such fund as if it XIX of 1925. were a Government Provident Fund.

Acts and proceedings not to be invalidated by vacancies.

No act or proceeding of the Board, or any authority of the University 27. or any committee constituted under this Act or by the Regulations shall be questioned on the ground merely of the existence of any vacancy in or defect in the constitution of, the Board, Authority or Committee of the University.

Conferment of degrees, diplomas and grant of certificates by University.

Notwithstanding anything contained in any other law for the time 28. being in force, the University shall have powers to confer degrees, diplomas and grant certificates, and confer degrees and honorary degrees, and other academic distinctions and titles, as approved by the Board.

Returns and information.

The University shall furnish to the State Government, University 29. Grants Commission and other statutory authorities such reports, returns, statements and other information as may be required by them from time to time.

Management of University on dissolution of trust.

The trust shall give a notice of not less than six months period to the State Government of its intention to dissolve the trust. Upon receipt of any notice from the Trust, the State Government shall make arrangements for administration of the University from the date of dissolution of the Trust and until the last batch of students in regular courses of the University complete their courses. The expenditure for administration of the University during taken-over period of its management shall be met out of the

Permanent Endowment Fund of the University. On dissolution of the Trust, this fund shall be in the form of a corpus fund.

The State Government shall have powers to issue directions from 31. time to time as may be required to be followed by the University under the Government. provisions of this Act, the Regulations made thereunder and under any other law for the time being inforce.

- (1) Subject to the provisions of this Act, the Board shall have, in Regulations. addition to all other powers vested in it, the power to make Regulations to provide for the administration and management of the affairs of the University.
- (2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:
 - the summoning and holding of meetings of the authorities of the University, other than the First Meeting of the Board, and the quorum and conduct of business at such meetings;
 - the power and functions to be exercised and discharged by (ii) the President of the Board of the University;
 - the constitution, powers and duties of the authorities, bodies (iii) and other committees of the University established under this Act, the qualifications and disqualifications for membership of such authorities, term of office of the membership, appointment and removal of members thereof and other matters connected therewith;
 - the procedure to be followed by the Board and any (iv) Committee or other body constituted under this Act or by the Regulations in the conduct of the business, exercise of the powers and discharge of the functions;

- (v) the procedure and criteria to be followed in establishing courses of study and admission of students;
- (vi) the procedure to be followed for enforcing discipline in the University;
- (vii) the management of the properties of the University;
- (viii) the degrees, diplomas, certificates and other academic distinctions and titles which may be conferred or granted by the University and withdrawal or cancellation of any such degrees, diplomas, certificates and other academic distinctions and titles and the requirements thereof;
- (ix) the conduct of examinations including the term of office and appointment of examiners;
- (x) the creation of posts of Professors, Associate Professors, Assistant Professors, Readers, Lecturers or equivalent academic designations or posts, officers and employees of the University, and the appointment of persons to such posts including the qualifications requisite therefor;
- (xi) the fees and other charges which may be paid to the University for the courses, training, facilities and services provided by it;
- (xii) the manner and conditions for constitution of insurance, pension and provident funds and such other schemes for the benefit of officers, teachers, and other employees of the University;
- (xiii) the terms and conditions applicable for association of the University with other institutions;
- (xiv) the preparation of budget estimates and maintenance of accounts;
- (xv) the mode of execution of contracts or agreement by or on behalf of the University;

- (xvi) the classification and procedure for appointment of officers and staff of the University;
- (xvii) the terms and tenure of appointments, salaries and allowances, contractual services, rules of discipline and other conditions of service of the Director, other officers, teachers and employees of the University;
- (xviii) the terms and conditions governing deputation of officers and staff of the University;
- (xix) the powers and duties of the Director and other officers, teachers and employees of the University;
- the terms and conditions governing fellowship, scholarships, stipends, medals and prizes;
- (xxi) the authentication of the orders and decisions of the Board;
- (xxii) the matters relating to hostels and halls of residence including disciplinary control therein; and
- (xxiii) all matters which, by this Act, are to be or may be prescribed by the Regulations.

University or in connection with the first meeting of any authority of the University or otherwise in first giving effect to the provisions of this Act and the Regulations, the President of the University may, at any time, before all authorities of the University have been constituted, by order, make any appointment or do anything consistent, so far as may be, with the provisions of this Act and the Regulations, which appear to him necessary or expedient for the purpose of removing the difficulty and every such order shall have effect as if such appointment or action had been made or taken in the manner provided in this Act and the Regulations:

Provided that before making any such order the President may ascertain and consider the opinion of the Director and of such appropriate authority of the University as may have been constituted.

Removal of difficulties at the commencement.

Transitory provisions.

- 34. Notwithstanding anything contained in this Act,-
- (1) the Director may, with the prior approval of the President and subject to availability of funds, discharge all or any of the functions of the University for the purpose of carrying out the provisions of this Act and the Regulations and for that purpose may exercise any power or perform any duties which by this Act and the Regulations are to be exercised or performed by any authority of the University until such authority comes into existence as provided by this Act and the Regulations;
- the Board of the Institute functioning as such immediately before the commencement of this Act shall continue to so function until the Board is constituted for the University under this Act, but on the constitution of the Board under this Act, the members of the Board holding office before such constitution shall cease to hold office;
- immediately before the commencement of this Act shall continue to so function until the Academic Council is constituted for the University under this Act, but on the constitution of the Academic Council under this Act, the members of the Academic Council holding office before such constitution shall cease to hold office;
- (4) the Finance Committee of the Institute functioning as such immediately before the commencement of this Act shall continue to so function until the Finance Committee is constituted for the University under this Act, but on the constitution of the Finance Committee under this Act, the members of the Finance Committee holding office before such constitution shall cease to hold office;
- (5) until the first Regulations of the University are made under this Act, the existing rules and regulations of the Nirma Education and Research Foundation, Ahmedabad, as approved by the Board as in force immediately before the commencement of this Act, shall continue to apply to the University, in so far as they are not inconsistent with the provisions of this Act.

Indemnity.

35. No suit, prosecution or other legal proceedings shall lie against and no damages shall be claimed from the University, the Director, the authorities or officers of the University or any other person in respect of anything which is done in good faith or purporting to be done in pursuance of this Act or any Regulation made thereunder.

STATEMENT OF OBJECTS AND REASONS

Since long, it was felt that there is a genuine need to create a sound infrastructure in the State of Gujarat in the field of Science and Technology of international standards and to actively participate in the fructification of the national plan for the science technology. It is well known that the rate of change in today's technological world is extremely fast and unless the technological education system is allowed to keep pace with these changes, the same will be rendered redundant. With this objective, the Nirma Education and Research Foundation, Ahmedabad, has created a trust for establishing University of national level to provide an opportunity for quality education in Science and. Technology and has proposed to the State Government to enact a special law for giving the status of University to this Institute.

This Bill proposed to allow the setting up of a University for imparting courses related to Science and technology which aims at to promote, reform and innovation. It is, therefore, considered necessary to establish the Nirma University of Science and Technology in the State of Gujarat by enacting a law.

This Bill seeks to achieve the aforesaid objects.

The following notes on clauses explain in brief some of the important provisions of the Bill.

- This clause provides for short title and commencement. Clause 1.-
- This clause defines certain terms used in the Bill. Clause 2.-
- Clauses 3, 4 and 6.- These clauses provide for the establishment and incorporation, objects and powers of the University.
- Clause 7.- This clause provides that the patron trustee of the Nirma Education and Research Foundation, Ahmedabad, shall be the President of the University, and provides for powers of the President.
- These clauses relate to authorities and officers of the Clauses 8 and 9.-University.
- These clauses relate to the constitution, Clauses 10: 12 and 13.powers and functions of the Board of Governors and terms of office and filling up of vacancies of members.
- This clause relates to Chairman and its powers. Clause 11.-
- Clauses 14 and 15.- These clauses relate to constitution of Academic Council and its powers and functions.
- Clauses 16 and 17.- These clauses relate to constitution of Finance Committee and its powers and functions.

- Clause 18 and 19.- These clauses relate to Director and its powers and functions.
- Clause 20.- This clause relates to the Executive Registrar and its powers and functions.
- Clause 21.- This clause relates to Deans of the University and powers and functions to be performed by him.
- Clauses 22 and 23.- These clauses relate to Permanent Endowment Fund of the University and payment to University.
- Clause 24.- This clause provides for University Fund.
- Clause 25.- This clause provide for the preparation of the annual financial estimates, annual accounts, audit and annual report.
- Clauses 26.- This clause provides for the pension, provident fund and insurance of officers, teachers and other employees of the University.
- Clauses 28 and 29.- These clauses relate to conferment of degrees, diplomas and grant of certificates by the University and returns and information to be furnished to the State Government.
- Clause 30.- This clause relates to arrangements for administration of the University.
- Clause 31.- This clause relates to powers of the State Government to give directions as may be required from time to time.
- Clauses 32 to 35.- These clauses relate to make regulations, removal of difficulties at the commencement, transitory provisions and indemnity.

ANANDIBEN PATEL

FINANCIAL MEMORANDUM

Clause 22 of the Bill provides that there shall be Permanent Endowment Fund of the University of the sum of Rupees Ten crores placed by the Trust for meeting the operational expenditure of the University for three years. Therefore, the expenditure shall be incurred from the said Fund. Hence, at present, the provisions of the Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

ANANDIBEN PATEL

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill provides for delegation of legislative powers in the following respects, namely :-

- Sub-clause (2) of this clause empowers the State Clause 1:-Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.
- Clause 6.-(i) Sub-clause (v) of this clause empowers the University to prescribe by regulations, the manner in which degrees and diplomas are to be conferred and certificates are to be granted and other academic distinctions or titles and also to withdraw or cancel such degrees, diplomas, certificate or other academic distinction or titles of person;
 - sub-clause (vi) of this clause empowers the University to prescribe by regulations, the manner in which honorary degrees or other distinctions are to be conferred by the University;
 - sub-clause (xvii) of this clause empowers the University to (iii) · prescribe by regulations, the fees and other charges to be fixed, demanded, received or recovered by the University;
 - sub-clause (xxvi) of this clause empowers the University to prescribe by regulations, the manner in which the student shall be admitted to it for the courses offered by the University;
 - sub-clause (xxvii) of this clause empowers the University to (v). prescribe by regulations, the disciplinary measures to be taken against the employees of the University for the purpose of regulating and enforcing discipline among the employees;
 - (vi) sub-clause (xxx) of this clause empowers the Board, to prescribe by regulations, delegation of powers of the authorities or officers to any other authority or officer.
- Sub-clause (d) of this clause empowers the Board to declare by regulations, such other authorities to be the authorities of the University.
- Clause 9.-Sub-clause (d) of this clause empowers the Board to declare regulations such other persons to be the officers of the University.
- Clause 11.- Sub-clause (2) of this clause empowers the Chairman to exercise such other powers and perform such other duties as may be assigned to him by the regulations.

- Clause 12.- Para (x) of sub-clause (2) of this clause empowers the Board by Regulations to exercise such other powers and perform such other functions as may be conferred or imposed upon it.
- Clause 15.- Sub-clause (iv) of this clause empowers the Academic Council to exercise such other powers and perform such other duties as may be conferred or imposed upon it by the regulations.
- Clause 17.- Sub-clause (viii) of this clause empowers the Finance Committee by regulation to exercise such other powers and perform such other duties as may be conferred or imposed upon it.
- Clause 18.- Sub-clause (f) of this clause empowers the Board to prescribe by regulations, the conditions of service of the Director including salary, allowances, leave, pension and provident fund.
- Clause 19.- Para (iv) of sub-clause (2) of this clause empowers the Director to exercise such other powers and perform such other duties as may be assigned to him by the regulations.
- Clause 20.- (i) Sub-clause (1) of this clause empowers the Board to prescribe by regulations, the manner and terms and conditions, subject to which the Executive Registrar shall be appointed by the University;
 - (ii) para (vi) of sub-clause (2) of this clause empowers the Executive Registrar to exercise such other powers and perform such other duties as may be assigned to him by the regulations.
- Clause 21.- Sub-clause (2) of this clause empowers the Board to prescribe by regulations, the powers and functions subject to which the Dean shall exercise powers and perform the functions.
- Clause 25.- (i) Sub-clause (1) of this clause empowers the Board to prescribe by regulations the form and the manner in which proper account, other relevant records, annual statement of accounts, the income and expenditure account and the balance sheet shall be maintained and prepared respectively.
 - (ii) sub-clause (2) of this clause empowers the Board to prescribe by regulations, the manner of adoption of a proper system of internal checks and balances and controls by the University.
- Clause 26.- Sub-clause (1) of this clause empowers the Board to prescribe by regulations, the manner and the conditions for constituting schemes of pension, provident fund and insurance for the officers, teachers and other employees of the University.

Clause 32.- Sub-clause (1) of this clause empowers the Board to make regulations for the administration and management of the affairs of the University and sub-clause (2) empowers the Board to make Regulations for all or any of the matters specified therein.

The delegation of legislative powers as aforesaid is necessary and of a normal character.

Dated the 4th March, 2003.

ANANDIBEN PATEL.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 4th March, 2003.

Secretary to the Government of Gujarat.
Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.





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PART-V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 6th March, 2003. by Shri Dolatbhai Parmar MLA is published under rule 127-A of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO.14OF 2003.

THE GUJARAT RESERVATION OF VACANCIES IN POSTS AND SERVICES (FOR SCHEDULED CASTES AND SCHEDULED TRIBES) BILL, 2003.

A BILL

to provide for adequate representation of Scheduled Castes and Scheduled Tribes in posts and services under the State.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

- 1. (1) This Act may be called the Gujarat Reservation of Vacancies Short title, in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, extent and commence-ment.
 - (2) It extends to the whole of the State of Gujarat.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

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V- Ex.-14-1

Definitions. 2. In this Act, unless the context otherwise, requires,—

- (a) "Prescribed" means prescribed by rules made under this Act,
- (b) "recruitment year" means the financial year during which a recruitment is actually made.
- (c) "reservation" means reservation of vacancies in post and services for the Scheduled Castes and Scheduled Tribes.
- (d) "Scheduled Castes" shall have reference to the Scheduled Castes specified in the Constitution (Schedule Castes) Order, 1950 made under Article 341 of the Constitution of India and as amended from time to time.
- (c) "Scheduled Tribes" shall have reference to the Scheduled Tribes specified in the Constitution (Scheduled Tribes) Order, 1950 made under Article 342 of the Constitution of India and as amended from time to time.
- (f) "Select list" means the list of candidates arranged in order of precedence prepared according to the rules and orders issued by the State Government in that behalf and adopted by the competent authority or making appointment in respect of initial recuitment and promotions.
 - (g) "State" means the Government of the State of Gujarat.

Applicability. 3. This Act shall apply to,-

- (1) All appointments to the posts and services under the State except,—
 - (a) those meant for conducting or guiding or directing research;
 - (b) those classified as scientific posts;
 - (c) those filled up on the basis of any contract;
 - (d) ex-cadre posts;
 - (e) those which are filled up by transfer or deputation;
 - (f) such other posts the State Government may, from time to time by order specify:

Provided that all orders made under clause (f) shall, as soon as after they are made, be laid before the State Legislature for not less than thirty days which may be comprised in one or more sessions.

- (2) all appointments to the district level posts,
- (3) all appointments in the Panchayats, Boards and Corporation constituted by the State Government.

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- all appointments in institutions aided by the State Government.
 - all other appointments, which the State Government may (5) specify from time to time.
 - Except as otherwise provided in this Act, the vacancies Reservation reserved for the Scheduled Castes and the Scheduled Tribes shall not be and the filled up by candidates not belonging to the Scheduled Castes and Scheduled thereof. Tribes.

The reservation of vacancies in posts and services shall be at such percentage of the total number of vacancies as the State Government may, from time to time by order determine;

Provided that-

- (a) in the case of initial recruitment the percentage so determined shall, in no case be less than the percentage of the persons belonging to the Scheduled Castes or the Scheduled Tribes as the case may be, in the total population of the State,
- (b) in the case of initial recruitment the district level posts, the percentage so determined, shall, in no case be less than the percentage of the persons belonging to the Scheduled Castes or the Scheduled Tribes as the case may be, in the total population of that district and in no case be less than the percentage of persons belonging to the Scheduled Castes or the Scheduled Tribes as the case may be, in the total population of the State.
- (c) save as otherwise provided in this Act, in the case of appointment by way of promotions the percentage of reservation shall be such as is laid down in paragraphs (a) and (b).

Explanation,— The expression "population" means the population as ascertained at the last census for which the relevant figures have been published.

The State Government shall prescribe model roster Model indicating the number of vacancies to be reserved for the Scheduled Castes and Scheduled Tribes and the number of vacancies to be left unreserved.

- (2) The appointing authorities shall maintain roster in the prescribed form.
- (3) The roster shall be consulted for ascertaining the number of reserved vacancies only but the appointment shall be made in accordance with the order of precedence as shown in the select list.
- If, In any recruitment year, the number of candidates other from Carry Scheduled Castes or Scheduled Tribes is less than the number of vacancies forward of reserved for them the remaining vacancies may be filled up by general and candidates after dereserving the vacancies in the prescribed manner, but dereservation the vacancies so dereserved shall be carried forward to the subsequent three years of recruitment.

Relaxation and concessions.

- 7. For initial appointments for the candidates belonging to Scheduled Castes and Scheduled Tribes.
- (a) the upper age-limit prescribed for recruitment shall be relaxed by five years.
- (b) fee prescribed for application for any post shall be one fourth of what it is for others.
- (c) travelling allowance to attend competitive written examination and oral interview shall be paid at such rates as may be prescribed by the State Government.
- examinations shall be relaxed by 5 percent.

Mamber of 8. initial of recruitment.

- 8. (1) For recruitment through employment exchange the number of vacancies reserved for Scheduled Castes and Scheduled Tribes shall be specified in the requisition to be sent to the employment exchange against the total number of vacancies.
- (2) For recruitment to be made through the Gujarat Public Service Commission or any Selection Board on the basis of competitive examination or interview the advertisement shall specify the number of vacancies reserved for Scheduled Castes and Scheduled Tribes against the total number of vacancies.
- (3) The Scheduled Castes and Scheduled Tribes candidates shall be recruited to the extent of the reserved vacancies if they possess the minimum qualifications required for the posts or services.
- (4) If the required number of Scheduled Castes and Scheduled Tribes candidates are not available for filling up the reserved vacancies, a fresh recruitment shall be made only from candidates belonging to the Schedules Castes or Scheduled Tribes, as the case may be, for filling up the remaining reserved vacancies.
- (5) If after making such fresh recruitment candidates belonging to the Schedule Castes or Scheduled Tribes are still not available or if the number of such candidates is less than the number of reserved vacancies, the vacancies which remain unfilled shall be filled up by general candidates in accordance with the procedure laid down in section 6.
- (6) For district level posts if the candidates belonging to Schedules Castes or Scheduled Tribes, as the case may be, are not available in the district employment exchange in sufficient number at the time of initial trecruitment, the employment exchange of other district where there is large population of Schedules Castes or Scheduled Tribes, as the case may be, shall be consulted.

Promotion based on seniority cum-fitness.

- 9. (1) Where promotion is to be made on the basis of seniority subject to fitness, the Schedule Castes and Scheduled Tribes officers shall be promoted to the next higher post or grade against reserved vacancies provided they possess the minimum qualifications and experience required for such promotion.
- (2) The number of reserved vacancies shall be determined on the basis of the reserved points shown in the roster maintained under Section 5.

Where promotion is to be made on the basis of selection and the Promotion element of direct recruitment does not exceed fifty percent the procedure for filling up of the reserved vacancies shall be such as may be prescribed and the number of reserved vacancies shall be determined on the basis of the reserved points shown in the roster maintained under Section 5.

Where selection is to be made from different services the recruitment Selection or appointing authority shall select Scheduled Castes and Scheduled Tribes candidates to the extent of reserved quota, provided such candidates satisfy the minimum conditions of suitability qualification and experience laid down in respect of the post concerned.

different services.

(1) Every appointing authority shall furnish to the State Government Submission 12. annual report in the prescribed manner by the end of the month of June of the succeeding financial year and maintain such other records as may be prescribed.

of annual report, maintenance of other

- (2) Any officer authorised by the State Government in that behalf records and may inspect any record or documents and require the appointing authority inspection to produce the roster and other records relating to appointments made by it and which are maintained in its office.
- (3) It shall be the duty of the appointing authority to produce such records and documents, furnish such information and afford all such assistance and facilities as may be necessary for the aforesaid purpose.
- In each department of the State Government an officer not below Nomination **13.** the rank of an Under Secretay authorised by the Secretary of the department of Liaison in that behalf shall act as Liaison Officer in respect of the matter provided in this Act who shall be specially responsible for

- (a) ensuring proper implementation of the provisions of this Act and the rules made thereunder
 - (b) ensuring compliance by the subordinant authorities.
 - (c) ensuring timely submission of returns,
- (d) conducting annual inspections of rosters and such other record as may be prescribed,
- (e) acting as Liaison Officer between the administrative department and the Social Welfare Department,
- (f) ensuring necessary assistance to the Social Welfare Department in the investigation of complaints received from individuals or organisations belonging to Scheduled Castes and Scheduled Tribes.
- (1) There shall be a Standing Committee consisting of the following Constitution members, namely:-

of Standing Committee.

- (a) The Minister for Social Welfare—Chairman.
- (b) Three members of the Gujarat Legislative Assembly to be elected in such manner as may be determined by the Speaker of the Gujarat Legislative Assembly-Member.
 - (c) The Chief Secretary to Government—Member.

- (d) The Secretary to Government, Home Department—Member.
- (e) The Chief Secretary to Government, Social Welfare Department—Member Secretary:

Provided that on issue of a proclamention under Article 356 of the Constitution of India the composition of the committee may be altered by the State Government to such extent as it may deem fit.

Functions of 15. (1) The Committee shall meet at least thrice a year and the period the standing between any two meetings shall not be more than six months.

- (2) The Committee shall perform the following functions, namely:
- (i) review of the implemention of the provisions of this Act and rules made thereunder,
- (ii) suggest measures for the removal of difficulties in such implementation or for the improvement thereof and
- (iii) such other functions as the State Goveenment may from time to time assign to the Committee.

Annual Report. 16. The State Government shall prepare an annual report on the working of the Act and lay the same before the State Legislature for a period of not less than fifteen days in the Budget Session of the succeeding financial year.

Legal aid.

17. Legal aid shall be made available by he State Government at the prescribed rates to the employees belonging to Scheduled Castes and Scheduled Tribes in cases of thier grievances.

Rule making power.

- 18. (1) The State Government may, by notification in the Official Gazette (after previous publication), make rules to carry out all or any of the purposes of this Act.
- (2) In particulars and without prejudice to the generality of the foregoing powers, the State Government may make rules in respect of all matters expressly required or allowed by this Act to be prescribed.
- (3) All rules made under this Act, shall, as soon as may be, after they are made, be laid before the State Legislature for not less than thirty days which may be comprised in one or more sessions and if during the said period, the State Legislature makes any modifications therin, the rules shall thereafter have effect only in such modified form so however that such modifications shall be without prejudice to the validity of any thing previously done under the rules.

Overriding effect of the Act.

19: The provisions of this Act shall have effect not with standing anything to the contrary in any other law or in any rule, order or resolution made by the State Government.

STATEMENT OF OBJECTS AND REASONS.

According to Costitutional provisions, the State Government have made several administrative orders for implementation of policy of reservation for Scheduled Castes and Scheduled Tribes. But due to lack of effective control the provisions of such administrative order could not be strictly implemented and the employees belonging to Scheduled Castes and Scheduled Tribes have to face injustice many a time. This Bill, therefore, provides for the effective implementation of the policy.

Gandhinagar, Dated the 31st January, 2003 DOLATBHAI PARMAR,

M.L.A.

FINANCIAL MEMORANDUM

Clause 14 of the Bill requires the State Government to constitute standing committee and Clause 15 requires at least three meeting to be held in a year, clause 17 requires the State Government to make available legal aids to employees belonging to Scheduled Castes and Scheduled Tribes at the prescribed rates. It is estimated that the expenditure to be involved from the Consolidated Fund of the State in regard to above provisions would be about rupees two lakhs per annum.

Gandhinagar, Dated the 31st January, 2003 DOLATBHAI PARMAR,

M.T.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of Clause 1, empowers the State Government to appoint by notification in the Official Gazette the date on which the Act shall come into force.

Paragraph (f) of sub-clause (1) of clause 3 empowers the State Government to specify by order posts other than those specified in the sub-clause.

Sub-clause (3) of clause 3 empowers the State Government to specify from time to time appointments other than those specified in the preceding sub-clauses.

Sub-clause (2) of clause 4 empowers the State Government to determine the percentage of reservation of vacancies in posts and services.

Sub-clause (1) of clause 5 empowers the State Government to prescribe model roster.

Sub-clause (2) of clause 5 empowers the State Government to prescribe form for maintaining roster.

Clause 6 empowers the State Government to prescribe manner for filling up reserved vacancies by general candidates in case the number of candidates from Scheduled Castes and Scheduled Tribes is less than the number of vacancies reserved for them.

Paragraph (c) of clause 7 empowers the State Government to prescribe rates of travelling allowance to be paid to the candidates belonging to the Scheduled Castes and Scheduled Tribes for attending competitive examination or oral interviews.

Clause 10 of the Bill empowers the State Government to prescribe procedure for filling up the reserved vacancies where promotion is to be made on the basis of selection and the element of direct recruitment does not exceed fifty percent.

Sub-clause (1) of clause 12 empowers the State Government to prescribe a manner for furnishing annual report to the State Government and to maintain other records.

Paragraph (d) of clause 13 empowers the State Government to prescribe other records for conducting annual inspection.

Paragraph (b) of clause 14 empowers the Speaker of the Gujarat Legislative Assembly to determine manner for electing members of the Assembly on the Standing Committee.

The proviso to clause 14 empowers the State Government to alter the composition of the Standing Committee on issue of proclamation under Article 356 of the Constitution to such extent as it may deem fit.

Paragraph (iii) of sub-clause (2) of clause 15 empowers the State Government to assign to the Standing Committee other functions from time to time.

Clause 17 of the Bill empowers the State Government to prescribe rates for making available legal aid to the employees belonging to the Scheduled Castes and Scheduled Tribes.

Sub-clause (1) of clause 18 empowers the State Government to make rules for carrying out the purposes of the Act.

The delegation of legislative powers as aforesaid is essential and of normal character.

Gandhinagar, Dated the 31st January, 2003 DOLATBHAI PARMAR, M.L.A.

D. M. PATEL,

Gandhinagar,

Dated: 6th March, 2003. Secretary,

Guiarat Legislative Assembly.

Government Central Press, Gandhinagar.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduces on the 6th March, 2003. by Shri Dolatbhai Parmar MLA is published under rule 127-A of the Gujarat Legislative Assembly Rules for general information

GUJARAT BILL NO. 15 OF 2003.

THE GUJARAT SCHEDULED CASTES, SCHEDULED TRIBES, DENOTIFIED TRIBES (VIMUKTA JATIES) NOMADIC TRIBES AND OTHER BACKWARD CLASSES (REGULATION OF ISSUANCE AND VERIFICATION OF) CASTES CERTIFICATES BILL, 2003.

ABILL

to provide for the regulation of the issuance and verification of the Castes Certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jaties), Nomadic Tribes and Other Backward Classes and for matters connected therewith or incidental thereto.

Whereas it is expedient to provide for the regulation of the issuance and verification of the Castes Certificates to the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jaties), Nomadic Tribes and other Backward Classes and for matters connected therewith or incidental thereto. It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Gujarat Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jaties), Nomadic Tribes and other Backward Classes (Regulation of Issuance and, Verification of) Caste Certificate Act, 2003.

Short title, extents and commencement.

- (2) It extends to the whole of the State of Gujarat.
- (3) It shall come into force on such date, as the State Government may, by notification in the Official Gazette, appoint.

Definitions.

- 2. In this Act, unless the context otherwise requires,—
- (a) "caste Certificate" means the certificate issued by the Competent Authority to an applicant indicating therein the Scheduled Caste Scheduled Tribes, De-notified Tribe (Vimukta Jaties), Nomadic Tribe or other Backward Class as the case may be, to which such applicant belongs;
- (b) "competent Authority" means a officer or authority authorised by the Government, by notification in the Official Gazette, to issue a Caste Certificate, for such area or for such purposes as may be specified in the said notification and shall include all the Competent Authorities already designated by the Government before the coming into force of this Act, having jurisdiction over the area or place to which the applicant originally belongs, unless specified otherwise;
- (c) "de-notified Tribes (Vimukta Jaties)" means the Tribes, declared as such by Government from time to time;
- (d) "educational institution" means any School, Junior College, Degree College, College of Education; Polytechnic, Industrial Training Institute, College of Fine Arts and Architecture, College of Music and Dance, Engineering College, Agricultural College, Veterinary College, Medical College, Dental College, Ayurvedic College; Homeopathic College, Unani College, Nurses Training School, Health Visitors Training School, Vocational Training Institution, Deemed University, Open University and various colleges under the control of any University established by or under an Act of the State Legislature and such other Institution, by whatever name called, which is carrying on (either exclusively or among other activities) the activity of imparting education as may be notified by the Government from time to time;
 - (e) "Government" means the Government of Gujarat;
- (f) "local Authority" means in relation to local areas comprised within the jurisdiction of a Municipal Corporation, the concerned Municipal Corporation and in relation to any other local area in the State, the concerned Municipality District Panchayat, Taluka Panchayat, Industrial Township, Nagar Panchayat or Village Panchayat, having the jurisdiction over such local area;
- (g) "nomadic Tribes" means tribes wandering from place to place in search of their livelihood as declared by Government from time to time;
- (h) "other Backward Classes" means any Socially and Educationally Backward Classes of citizens as declared by the Government and includes Other Backward Classes declared by Government of India in relation to the State of Gujarat;
- (i) "prescribed" means prescribed by rules made by the Government under this Act;
- (j) "scheduled Castes" and "Scheduled Tribes" shall have the meanings respectively assigned to them in clause (24) and clause (25) of Article 366 of the Constitution of India;
- (k) "scrutiny Committee" means the Committee or committees constituted under sub-section (1) of section 6 for the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jaties), Nomadic Tribes or Other Backward Classes for verification of the Caste Certificate and to perform the function of Scrutiny Committee under this Act;

3. Any person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jaties), Nomadic Tribes or Other Backward Classes required to produce a Caste Certificate in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes, either in any public employment or for admission into any educational institution, or any other benefit under any special provisions made under clause (4) of Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or in the Co-operative Societies; or for purchase or transfer of land from a tribal land-holder or any other purposes specified by the Government, shall apply in such form and in such manner as may be prescribed, to the Competent Authority for the issue of a Caste Certificate.

Application for a Caste Certificate.

4. (1) The Competent Authority may, on an application made to it under section 3, after satisfying itself about the genuineness of the claim and following the procedure as prescribed, issue a Caste Certificate within such time limit and in such form as may be prescribed or reject the application for reasons to be recorded in writing.

Caste Certificate to be issued by Competent Authority.

(2) A Caste Certificate issued by any person, officer or authority other than the Competent Authority shall be invalid. The Caste Certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee.

Appeal.

- 5. (1) Any person aggrieved by an order of rejection of application passed by the Competent Authority under sub-section (1) of section 4 may, within thirty days from the date of receipt of order, appeal to the Appellate Authority specified by the Government by notification in the Official Gazette.
- (2) The Appellate Authority may within a period of three months, after giving the appellant an opportunity of being heard and after satisfying itself about the genuineness or otherwise of the claim of the appellant either confirm the rejection order, or set aside the order of the Competent Authority and direct the Competent Authority to issue the caste certificate.
- 6. (1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

Verification of Caste Certificate by Scrutiny Committee.

- (2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jaties), Nomadic Tribes or Other Backward Classes for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.
- (3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a Validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions who has not obtained such certificate.
- (4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed.
- 7. (1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jaties), Nomadic Tribes or Other Backward Classes has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes,

Confiscation and cancellation of false Caste Certificate. the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any.

(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the high Court under Article 226 of the Constitution of India.

Burden of proof.

8. Where an application is made to the Competent Authority under section 3 for the issue of a Caste Certificate in respect of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jaties), Nomadic Tribes or Other Backward Classes and in any enquiry conducted by the Competent Authority and Scrutiny Committee or the Appellate Authority under this Act or any trial of offence under this Act, the burden of proving that the person belonged to such Caste, Tribe or Class shall be on such claimant applicant.

Civil Court powers to Competent Authority, Appellate Authority and Scrutiny Committee. 9. The Competent Authority, the Appellate Authority and the Scrutiny Committee shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely:—

5 of 1908.

- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

- (d) requisitioning any public record or copy thereof from any Court or office; and
 - (e) issuing Commissions for the examination of witnesses or documents.

Benefits secured on the basis of false Caste Certificate to be withdrawn.

- 10. (1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatias), Nomadic Tribes or other Backward Classes secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or Co-operative Society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.
 - (2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.
 - (3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled on cancellation of such Caste Certificate by the Scrutiny Committee;
 - (4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, Co-operative Society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis). Nomadic Tribes, or other Backward Classes by

procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such take Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively.

11. (1) Whoever .-

Offences and penalties.

- (a) obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means; or
- (b) not being a person belonging to any of the Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, or other Backward Classes secures any benefits or appointments exclusively reserved for such Castes, Tribes or Classes in the Government, local authority or any other Company or Corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or co-operative Society against the office reserved for such Castes, Tribes or Classes, by producing a false Caste Certificate;

shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both.

(2) No court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorised by the Scrutiny Committee for this purpose.

2 of 1974.

12. Notwithstanding anything contained in the Code of Criminal Procedure, 1973.-

Offences under Act to be cognizable and nonbailable.

- (a) offences punishable under section 11 shall be cognizable and non-bailable;
- (b) every offence punishable under this Act, shall be tried by any Magistrate of First Class in a summary way and provisions of section 262 (except subsection (2), to 265 both inclusive) of this Code, shall as far as possible may be applied to such trial.
- 13. (1) Any person or authority performing the functions of Competent Authority under this Act, who intentionally issues a false Caste Certificate, shall on conviction, be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees, but which may extend upto twenty thousand rupees or both.

Penalty for issuing false Caste Certificate.

- (2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government.
- 14. Whoever abets any offence punishable under this Act shall be punished with the punishment provided for in this Act for such offence.

Penalty for abatement.

15. No Civil Court shall have jurisdiction to entertain, to continue or to decide any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order, if the claim involved in such suit or proceeding, or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

Bar of jurisdiction of Civil Courts. Protection for acts done in good faith.

16. No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Act or the rules made thereunder.

Provisions of this Act to be in addition to any other law time being in force. 17. The provisions of this Act shall be in addition to the provisions of any other law for the time being in force.

Power to make rules.

- 18. (1) The Government may, subject to the previous publication by notification in the Official Gazette, make rules to carry out all or any of the purposes of this Act.
 - (2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following if the State Legislature agrees in making any modification in the rule or agrees that the rule should not be made and notify their decision to that effect in the Official Gazette, the rule shall, from the date of publication of such decision in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or ommitted to be done under that rule.

Power to remove difficulties.

19. (1) If any difficulty arises in giving effect to the provisions of this Act; the Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made before the State Legislature.

STATEMENT OF OBJECTS AND REASONS

It has been noticed that the incidents of procuring false Caste Certificates, in respect of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribe or other Backward Classes have reached alarming figure, Such false Caste Certificate not only enable the ineligible persons to avail of the concessions and reservations in the matter of securing employment or admission in the educational institutions or contesting for or being elected to any of the efective offices reserved for the benefit of the aforesaid Castes, Tribes and Classes, but also result in depriving the genuine members of the said Castes, Tribes and Classes of the said concessions and reservations thereby defeating the very purpose of such concessions and reservations.

- 2. The Hon'ble Supreme Court in its judgement dated the 18th April 1995, in the case of Director of Tribal Welfare, Government of Andhra Pradesh *Versus* Laveti Giri and another has also desired that "the Government of India should have the matter examined in greater details and bring about a uniform legislation with necessary guidelines and rules prescribing penal consquences on persons who flout the Constitution and corner the benefits reserved for the real tribals, etc. so that the menace of fabricating the false records and to gain unconstitutional advantage by plain/spurious persons could be prevented."
- 3. As the existing instructions issued by Government, from time to time, are found to be inadequate, to curb this menace, it is necessary to undertake a suitable legislation for regulating the issue of the Caste Certificate and verification of such certificate and also providing for deterrent punishment for those who indulge in such illegal activity.
 - 4. This Bill is intended to achieve the above objectives.

Gandhinagar, Dated the 31st January, 2003. DOLATBHAI PARMAR M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposals for delegation of legislative powers namely:—

Clause 1 (2).— Under this clause power is taken to the State Government to bring the Act into force on such date as it may, by notification in the Official Gazette, appoint.

Clause 2(b).—This clause empowers the State Government, by notification in the Official Gazette, to authorise an officer or authority to issue a Caste Certificate, for such area or for such purposes as may be specified in the said notification.

Clause 5 (1).— This clause empowers the State Government, to specify the Appellate Authority by notification in the Official Gazette, to whom appeal shall be made.

Clause 6 (1),—This clause empowers the State Government, by notification in the Official Gazette, to constitute one or more Scrutiny Committees for verification of Caste Certificates issued by the Competent Authorities and to specify the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

Clause 18 (1).—This clause empowers the State Government, to make rules, subject to the previous publication by notification in the Official Gazette, for carrying out the purposes of the Act.

Clause 19 (1).—This clause empowers the State Government, on occassion arising to issue an order for removal of difficulty in giving effect to the provisions of the Act.

The above mentioned delegation of legislative power is of a normal character.

Gandhinagar, Dated the 31st January, 2003. DOLATBHAI PARMAR M.L.A.

Gandhinagar, Dated: 6th March, 2003. D. M. PATEL,
Secretary,
Gujarat Legislative Assembly,

Government Central Press, Gandhinagar.

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GUJARAT GOVERNMENT E EX., 6-3-2003

"social security while W means pension for old persons indows and destitute women dependent childles Nabled persons.

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The words and expressions used in this Act, but not defined shall

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Security Fund, in the manner as may be prescribed.

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(2) The Fund shall vest with the Government.

Bills introduced in the Gujarat Legislative Assembly The forthwrite Bill which was introduced on the 6th March, 2003. by Shri Dolathhai Parmar MLAois published under rule 0120 Avof the Gujutar Legislative Assembly Rules for (1), the Fund shall be applied for the following purposes, moitamroini faranag utilized.

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bus sancarry beidesib edit of sometsizes laboratiff to provide for the establishment of the Gujarat Social Security Fund stwith at we water assistance in the form of pension to senior citizens; widows and destitute women, dependent children, disabled persons and to provide other similar social security measures and for the matter qon-believed sprogram and for the matter qon-believed therewith.

It is hereby enacted in the Fifty Fourth Year of the Republic of India (11 file authorities empowered to assess, re-assess in wolfor Edax under the Gujarat Sales Tax Act. 1969, shall assess reassess of collect the Chiarat Sales Tax Act from a dealer registered under the Gujarat the Collect the Colle Sales Tax Act, 1969 at the stageone-design officiamod Here It Sules Tax

Short title commencement.

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Definitions

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2. (1) In this Act, unless the context otherwise requires, ni betoellos and llad collecting antifority of the authority as specified in such manner, as may be prescribinge to (1) noitose-due

brustituted (1), (b), (1) "fund" means the Gujarat, Social Security Pund Constituted the proceeds of cess collected from a dealer carrier in cash or by cheque in to state is the transmitted of substances of the contraver and of elect by the Gujarat,

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of cess levied mider this Act, shall be the same as has been prescribed in
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schedule to the Reserve Bank of India Act, 1934;

"section" means the section of this Act; and

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V- Ex.-16-1

(1)

16-1

- (g) "social security measure" means pension for old persons financial assistance to windows and destitute women, dependent children and disabled persons.
- (2) The words and expressions used in this Act, but not defined shall have the same meaning as assigned to them in the Gujarat Sales Tax Act, 1969.

Guj. 1st of 1969.

Levy of Cess.

3. Notwithstanding anything contained in any other law for the time being in force and subject to the rules made under this Act, there shall be levied for the purposes of this Act, a cess on ad-valorem basis at the rate of ten percent on all the sales and purchases, of goods made under the Gujarat Sales Tax Act, 1969 effected after coming into force of this Act, except the goods declared to be of special importance in Inter State trade or commerce under section 14 of the Central Sales Tax Act, 1956.

74th of 1956.

Constitution of Fund.

- 4. (1) There shall be constituted a Fund to be called the Gujarat Social Security Fund, in the manner as may be prescribed.
 - (2) The Fund shall vest with the Government.

Purpose for which the Fund may be utilized.

- 5. (1) The Fund shall be utilized for the purposes as may be prescribed.
 - (2) Without prejudice to the generality of the provisions of sub-section (1), the Fund shall be applied for the following purposes, namely:-
 - (a) old age pension scheme;
 - (b) financial assistance to the widows and destitute women
 - (c) financial assistance to the dependent children;
 - (d) financial assistance to the disabled persons; and
 - (e) any other social security measures incidental to the above purposes as approved by the Government:

Provided that the Fund shall be utilised in order for the purposes specified in clause (a) to (e).

Manner of collection of cess.

- 6. (1) The authorities empowered to assess, re-assess or collect tax under the Gujarat Sales Tax Act, 1969. shall assess, re-assess or collect the cess levied under this Act from a dealer registered under the Gujarat Sales Tax Act, 1969 at the stage specified under the Gujarat Sales Tax Act, 1969.
- (2) The cess levied under sub-section (1), shall be collected in such manner, as may be prescribed.
- (3) The authorities reffered to in sub-section (1), shall deposit the proceeds of cess collected from a dealer either in cash or by cheque in a specified account to be opened in a Scheduled Bank and operated by the Government.

Procedure of maintenance of accounts and submission of returns.

7. The Procedure of maintenance of accounts and submission of returns of cess levied under this Act, shall be the same as has been prescribed in the Gujarat Sales Tax Rules, 1970.

8. (1) The Proceeds of cess collected under sub-section (1) of section 6, shall be deposited in the Fund within such period from the date of collection of such cess, as may be prescribed.

Procedure for deposite of fund and meeting obligations.

- (2) The Government shall open account in any of the Scheduled Banks for managing and carrying out the transactions with respect to the Fund.
 - (3) The Government may,-
 - (i) After meeting their obligation as specified in sub-section (2) of section 5, invest the surplus Fund including the Government securities in such manner, as it may deem fit;
 - (ii) constitute one or more advisory committees or engage suitable advisors to advise the Government for the efficient utilisation of the Fund;
 - (iii) enter into and perform all such agreements, as it may think necessary or expendient for performing any of its functions; and
 - (iv) perform such other acts, as it may think necessary or expedient for the proper conduct of its functions and for carrying into effect the purposes of the Act.
- 9. The Government may borrow and raise money in such manners as it thinks fit and secure the repayment of any money borrowed or raised, by mortgage, charge, standard security, lien or other security upon the whole or any part of Government assets (whether present or future), and also by a similar mortgage, charge, standard security, lien or security, guarantee for the performance of any obligation or liability, it may undertake or which may become binding on it.

Power of the Government to borrow and raise money.

10. The accounts of the Fund shall be audited by the Local Fund Examiner, Gujarat.

Andit.

11. No suit, prosecution or other legal proceeding shall lie against the Government or any other officer of the Government in respect of anything, which is done in good faith or intended to be done in pursuance of the provisions of the Act, rules made or any order issued thereunder.

Protection of action taken in good faith

12. (1) The Government may, by notification, make rules for carrying out the purpose of this Act.

Power to make rules.

- (2) Without prejudice to the generality of the foregoing power, such rules may provide for,—
 - (a) constitution, powers, functions, objectives for utilisation of the fund under section 4 and 5;
 - (b) the manner of collection of cess as provided in section 6;
 - (c) the period within which the amount is to be transferred to the fund under sub-section (1) of section 8; and

16-3

Frocedure for deposite of fund and meeting obligations. northese (d) (1) any other matter, which has to be or may be prescribed in ;

be, after it is made, before the State Legislature while it is session as may be, after it is made, before the State Legislature while it is session for a total period of Thirty days, which may be comprised in one session or in two of more successive sessions and if before the expiry of the session in which it is hard of the successive sessions as aforesaid, the house agrees in making any modification in the rules or the house agrees that the rules should not be made, the rules shall thereafter have effect only in such modified from or be of no effect as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that fule.

Power to remove difficulties.

13. If any difficulty arises in giving effect to the Provisions of this Act, the Government may, by order, make such provisions including any adaptation or modification of any provision of this Act, as appears to the Government to be necessary or expedient for the purpose of removing the difficulty:

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(iv) perform such ofter acts, as it may think necessary or expedient for the proper conduct of its functions and for carrying into effect

STATEMENT OF OBJECTS AND REASONS

Power of the Covernment to horrow and raise roosey. za stanosocial Security should be a priority programme for the State and it should be determined to cate to the requirements of the aged, infirms, destruites, without of sastiled and needy persons of the Society. The Government should grant old age persons, widow pension financial assistance to dependent children and disabled persons. But it is possible that the Government may experience financial problems in providing pinely release of pension and other financial assistance to the beneficiaries which involved financial liability of about 100 crores. As such to ensure timely release of pension and other financial assistances to the beneficiaries, it is necessary to levy Social Security Cess and establish Social Security Fund. The objective and purpose of the Social Security Fund include the provision of pensions to the old age persons, financial assistance to dependent children, and was destinate and disabled persons in the State to the requirement of the analysis of the social security for an another children, and was destinate and disabled persons in the State to the requirement of the social security for another children, and was destinate and disabled persons in the State to the requirement of the social security for another children, and was destinate and disabled persons in the State to the social security of the social security for another children, and the social security for another children, and the social security for an another children and the social security for the security for another children and the security for the security f

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Protection of action taken in 200d faith

12. (1) The Covernment any, by notification, make marpholaphylighed ALL SAMMAR INHERITAGO ALL. SOOS.

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- (2) :Willout prejudice to the generality of the foregoing power, such rules may provide for,—
- (a) constitution, powers, functions, objectives for utilisation of the fund under section 4 and 5;
- (b) the manner of collection of cess as provided in section 6,
- (c) the period within which the amount is to be transferred to the fund under sub-section (1) of section 8; and

FINANCIAL MEMORANDUM

A cess, on ad valorem basis on all sale and purchase of the goods except declared to be of special importance in inter-state trade of commerce by Section 14 of the Central Sales Tax Act, 1956, shall be levied. The cess shall be levied at the rate of 10% of the rate of sales/purchase tax applicable under the Gujarat Sales Tax Act, 1969 from time to time. This will be deposited in a fund to be called Social Security Fund which shall vest with the Government and it shall be utilized for the social security measures like old age pensions and other financial assistance schemes of the department. This will involve a financial liability of about Rs. 100 carores per annum.

The sales tax authorities will assess, re-assess collect and enforce, payment of Social Security Cess under the Gujarat Sales Tax Act, 1969. The Cess will be deposited in the Gujarat Social Security Fund which shall be utilized to grant pensions.

GANDHINAGAR. Dated 31st January, 2003.

DOLATBHAI PARMAR M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of of the Bill empowers the State Government to prescribe the manner for constituting the Gujarat Social Security Fund.

Sub-clause (1) of clause 5 of the Bill empowers the State Government to prescribe the purposes for application of the Fund.

Sub-clause (2) of clause 6 empowers the State Government to prescribe the manner for collecting the cess levied under the Act.

Sub-clause (1) of clause 8 empowers the state Government to prescribe the period within which the proceeds of the cess collected under the Act shall be deposited in the Fund.

Clause 12 of the Bill empowers the State Government to make rules for carrying out the purposes of the Bill. The powers sought to be delegated are necessary for the proper implementation of the provisions of the Bill and are normal in nature.

GANDHINAGAR. Dated 31st January, 2003.

DOLATBHAI PARMAR M.L.A.

Gandhinagar,

Dated: 6th March, 2003.

D. M. PATEL,

Secretary,
Gujarat Legislative Assembly.

Government Central Press, Gandhinagar.





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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 6th March, 2003. by Shri Dolatbhai Parmar MLA is published under rule 127-A of the Gujarat Legislative Assembly Rules for general information

GUJARAT BILL NO. 17 OF 2003.

THE GUJARAT ROADS AND BRIDGES DEVELOPMENT BOARD BILL, 2003.

A BILL

to provide for the establishment of the Gujarat Roads and Bridges Development Board with a view to improve the quality of roads and bridges infrastructure in the State of Gujarat and for matters connected therewith.

It is hereby enacted in the Fifty fourth Year of the Republic of India as follows:-

- 1. (1) This Act may be called the Gujarat Roads and Bridges Development Board Act, 2003.
 - (2) It shall come into force at once.
- 2. In this Act, unless there is anything repugnant to the context,-
 - (a) "board" means the Gujarat Roads and Bridges Development Board established under section 3:
 - (b) "bridge" means a permanent or temporary bridge on a plan road and shall include such other permanent or temporary bridges or ferry services as may, from time to time, be undertaken for construction or improvement by the Government;

V- Ex.-17-1

17 - 1

Short title, and commencement.

Definitions.

- (c) "fund" means the Gujarat Roads and Bridges Development Fund constituted under section 7;
- (d) "Government" means the Government of Gujarat
- (e) "national highway" means a national highway specified in the Schedule appended to the National Highways Act, 1956;

48 of 1956.

- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "plan road" means a road or part of a road other than a national highway or a link road and shall include such other road or part of a road, as may from time to time be undertaken for construction or improvement by the Government;
- (h) "regulation" means regulations made by the Board under this Act; and
- (i) "section" means section of this Act;

Establishment of Board, its constitution powers and duties.

- 3. (1) The Government may, by notification, for exercising the powers conferred on a and performing the functions and duties assigned to the Board by or under this Act, establish the Gujarat Roads and Bridges Development Board.
- (2) The Board, established in terms of sub-section (1) shall consist of a Chairman, Vice Chairman and the following other members, namely;-

(i)	Chief Minister, Gujarat	Chairman
(ii)	Minister Roads & Buildings	Vice-Chairman
(iii)	Chief Secretary	Member
(iv)	Secretary Finance	Member
(v)	Secretary Planning	Member
(vi)	Secretary Transport	Member
(vii)	Secretary	Member-Secretary

- (3) The Board constituted in terms of sub-section (2), shall be a body corporate having perpetual succession and a common seal with powers, subject to the provisions of this Act to acquire, borrow and raise commercial loans hold property and shall by the said name, sue and be sued.
- (4) The Government shall exercise general superintendence and control over the Board and its employees and may call for such information, as it may deem necessary.
- (5) Subject to the rules made under this Act, an estimate of annual income and expenditure of the Board for the ensuing Financial Year shall be got prepared by the Member-Secretary of the Board and shall be submitted to the Board for approval.
- (6) An annual statement of income and expenditure of the Board shall be got prepared by the Member-Secretary and after obtaining approval of the Board, the same shall be sent to the Government within a period of three months from the date of the closure of the Financial Year.

Audit.

4. The accounts of the Fund constituted under sub-section (1) of section 7, shall be audited by the Local Fund Examiner, Gujarat.

officers and employees of the Board. 5. (1) The Board may, with the approval of the Government, create such posts and appoint such officers and other employees thereon, as it may consider necessary for the efficient discharge of its functions.

PART V

(2) The conditions of service of officers and other employees referred to in sub-section (1), and their functions and duties shall be such, as may be regulated by the regulations made by the Board.

6. (1) Notwithstanding any provision to the contrary contained in any other law for the time being in force and subject to the rules made under this Act, there shall be levied for the purposes of this Act, a fee at a rate not exceeding ten percent to be notified by the Government, on the duty leviable under the Gujarat Sales Tax Act, 1964 and the Bombay Motor Vehicles Tax Act, 1958.

Levy and Collection of fee.

Gujarat-I of 1970 Bombay LXV of 1958.

- (2) The fee levied under sub-section (1), shall be collected by the Department concerned in the prescribed manner.
- (3) The proceeds of the fee levied under sub-section (1), shall be transferred by the Department concerned directly to the Fund
- (4) The arrears of fee levied under sub-section (1), shall be recoverable as arrears of land revenue.
- 7. (1) There shall be constituted a Fund to be called the Gujarat Roads and Bridges Development Fund, which shall vest in the Board established under section 3.

3. of Fund.

Constitution

- (2) The Fund constituted under sub-section (1), shall be administered by Member-Secretary of the Board under the superintendence and control of the Board. The Fund shall have the following contributions, namely:—
- (i) the amount of fee levied and collected under section 6;
- (ii) an annual grant of one hundred crores of rupees from the State Government with an annual increase if ten per cent every year;
- (iii) the income accrued to the Department of Roads & Buildings from various uses of land belonging to it;
- (iv) all types of toll taxes collected by the Department of Roads & Buildings.
- (v) all contributions received from the Government of India like Central Roads fund, Railway safety Fund, funds from the Schemes for Economic and Inter-State Importance Projects, Border Area Development Programme, Special Area Assistance Scheme or any other Scheme approved by the Government of India for Roads and Bridges Infrastructure in the State of Gujarat.
- (vi) additional income to the Department of Road and Buildings from road side advertisments, petrol pumps and weigh bridges' leases including any other miscellaneous receipt after the commencement of this Act;
- (vii) donations and private contributions; and
- (viii) any other funds, which the State Government may subsequently decide to contribute to the Fund.
- 3. The Fund shall be applied on Plan Roads for the purposes specified as under:—

Purposes for which the Fund may be applied.

- (i) construction of new roads;
- (ii) improvements like raising, widening and strengthening of the existing roads;
- (iii) replacement of old and unsafe bridges;
- (iv) construction of new bridges;
- (v) repair and maintenance of roads; and
- (vi) any other purpose pertaining to the improvement of roads and bridges infrastructure as may be considered necessary by the Board.

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Protection of action taken in good faith.

- Power to make rules .
- 9. No suit, prosecution of or other legal proceeding shall lie against the Government or any officer of the government or the Board in respect of anything, which is in good faith done or intended to be done in pursuance of this Act, rules and regulations made or any order issued thereunder.
- 10. (1) The Government may, by notification in the Official Gazette make rules for carrying out the purposes of this Act.
 - (2) Without prejudice to the generality of the foregoing power, such rules may provide for,—
 - (a) the preparation and submission for sanction of an estimate of annual income and expenditure under sub-section (5) of section 3;
 - (b) the manner in which the fee shall be collected under sub-section (2) of section 6; and
 - (c) any other matter which has to be or may be prescribed.
 - (3) Every rule made under this section shall be laid as soon as may be after it is made, before the State Legislature while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

Power to make regulations.

Power to

remove difficulties.

- 11. (1) The Board may, from time to time, with the previous approval of the Government, make regulation not inconsistent with this Act and the rules made thereunder for the purpose of giving effect to the provisions of this Act.
 - (2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for;—
 - (a) transacting business at the meeting of the Board, and
 - (b) the conditions of service of the officers and other employees of the Board and their functions and duties under sub-section (2) of section 5.
- 12. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order make such provision including any adaptation or modification of any provision of this Act, as appears to the Government to be necessary or expedient for the purpose of removing the difficulty;

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

STATEMENT OF OBJECTS AND REASONS

Gujarat has a large net work in planned roads and bridges in the State. This net work requires immediate upgradation to cater to the present day heavy vehicular movement Gujarat is a leading agricultural and industrial State. Because of poor condition of roads and bridges infrastructure in the State, further industrial and agricultural growth is being hampered. The State Government due to acute scarcity of resources has not been able to provide adequate funds for repair, maintenance and improvement of plan roads and bridges out of its normal budget. Accordingly there is dire need of mobilizing additional resources and setting up of an independent Roads and Bridges fund with a view to facilitating adequate earmarked availability of funds for plan roads and bridges infrastructural improvements. This Bill seeks to meet this objective. This step would enable the State Government to earmark funds to the extent of about Rs. 250.00 crores on annual basis, which would take care of growing needs of this important sector of development.

Hence this Bill.

GANDHINAGAR, DATED 31st January, 2003.

DOLATBHAI PARMAR M.L.A.

FINANCIAL MEMORANDUM

These proposals are basically aimed at earmarking dedicated funds for the improvement of Roads and Bridges infrastructure in the State. These proposals would enable the State Government to earmark funds to the extent of about Rs. 250.00 crores on yearly basis from the consolidated fund of the State.

GANDHINAGAR, DATED 31st January, 2003. DOLATBHAI PARMAR M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill empowers the Government to establish the Gujarat Roads and Bridges Development Board.

Sub-Clause (1) of clause 6 empowers the Government to notify the rate for levy and collection of fee at the rate not exceeding ten percent on the duty leviable under the Gujarat Sales Tax Act, 1964 and the Bombay Motor Vehicles Tax Act, 1958. Sub-clause (2) empoweres the Government to prescribe manner for collecting the fee.

Clause 10 empowers the Government to make rules for carrying out the purposes of the Act..

Clause 11 of the Bill empowers the State Government to make regulations for carrying out the purposes of the Bill.

The powers sought are necessary for the proper implementation of the provisions of the Bill and are of normal in nature.

GANDHINAGAR, DATED 31st January, 2003.

Gandhinagar,

Dated: 6th March, 2003.

DOLATBHAI PARMAR M.L.A.

D. M. PATEL,
Secretary,
Guiarat Legislative Assembly,





The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 6th March, 2003. by Shri Dolatbhai Parmar MLA is published under rule 127-A of the Gujarat Legislative Assembly Rules for general information

GUJARAT BILL NO. 18 OF 2003.

THE GUJARAT CONTROL OF ORGANISED CRIME BILL, 2003.

A BILL

to make special provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang and for matters connected therewith or incidental thereto.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Gujarat Control of Organised Crime Act, 2003.

Short title, extent and commencement.

- (2) It extends to the whole of the State of Gujarat.
- (3) It shall come into force on such date, as the State Government may, by notification in the *Official Gazette* appoint.

V- Ex.-18-1

Definitions

- 2. (1) In this Act, unless the context otherwise requires-
 - (a) "abet" with its grammatical variations and cognate expressions, includes -
 - (i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner an organised crime syndicate.
 - (ii) the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and
 - (iii) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate;
 - (b) "code" means the Code of Criminal procedure, 1973.

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- (c) "competent Authority" means the Competent Authority appointed under Section 13.
- (d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.
- (e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.
- (f) "organised crime syndicate" means a group of two or more persons who acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.
- (g) "special Court" means the Special Court constituted under Section 5.
- (h) words and expressions used but not defined in this Act and defined in the Code shall have the meaning respectively assigned to them in the Code.

- 3. (1) Whoever commits an offence of organised crime shall -
- Punishment for organised crime
- (i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lac.
- (ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.
- (2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilities the commission of an organised crime of any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to minimum fine of rupees five lacs.
- (3) Whoever harbours or conceals or attempts to harbour or conceal any members of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.
- (4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.
- (5) Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.
- 4. If any person on behalf of a member of an organised crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot satisfactorily account for he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also be liable for attachment and forfeiture, as provided in section 20.

Punishment for possessing unaccountable wealth on behalf of members of organised crime syndicate.

- 5. (1) The State Government may, by notification in the Official Gazette, constitute one or more special courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.
- (2) Where any question arises as to the jurisdiction of any special Court, it shall be referred to the State Government whose decision shall be final.
- (3) A special Court shall be presided over by a judge to be appointed by the State Government, with the concurrence of the Chief Justice of the Gujarat High Court. The State Government may also appoint with the concurrence of the Chief Justice of the Gujarat High Court, additional judges to exercise jurisdication in a Special Court.
- (4) A person shall not be qualified for appointment as a judge or an additional judge of a special Court, unless he immediately before such appointment, is a sessions judge or an additional sessions judge.
- (5) Where any additional judge is or additional judges are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order in writing provide for the distribution of the business of the Special Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judges.

Jurisdiction of Special Court.

6. Notwithstanding anything contained in the code, every offence punishable under this Act shall be triable only by the Special Court within whose local jurisdiction it was committed or as the case may be by the Special Court constituted for trying such offence under sub-section (1) of section 5.

Power of special Courts with respect to other offences.

- 7. (1) When trying any offence punishable under this Act, a Special Court may also try any other offence with which the accused may, under the code, be charged at the same trial, if the offence is connected with such other offence.
- (2) If, in the course of any trial of any offence under this Act, it is found that the accused person has committed any other offence and this Act, or under any other law, the Special Court may convict such person of such other offence and may pass any sentence authorised by this Act, or as the case may be, such other law, for the punishment thereof.

8. (1) For every Special Court, the State Government shall appoint a person to be the public prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors.

Public Prosecutor.

Provided that, the State Government may also appoint for any case or group of cases, a Special Public Prosecutor.

- (2) A person shall not be qualified to be appointed as a public prosecutor, an Additional Public Prosecutor or a Special Public Prosecutor unless he has been in practice as an Advocate for not less then ten years.
- (3) Every person appointed as a Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor under this Section shall be deemed to be a public prosecutor within the meaning of clause (u) of section 2 of the code, and the provisions of the code shall have effect accordingly.
- 9. (1) A Special Court may take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

Procedure and powers of Special Courts.

(2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the code, try the offence a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code shall, as far as may be, apply to such trial:

Provided that, where in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the code for the trial of such offence and the said provisions shall apply to and in relation, to a Special Court as they apply to and in relation, to a Magistrate:

Provided further that, in case of any conviction in a summary trial under this section, it shall be lawfull for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

- (3) A Special Court may, with a view to obtaining the evidence of any person, supposed to have been directly or indirectly concerned in or priory to an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abetter, in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the code, be deemed to have been tendered under section 307 thereof.
- (4) Subject to other provisions of this Act, a Special Court shall for the purpose of trial of any offence, have all the powers of a court of session and shall try such offence as if it were a court of session, so far as may be in accordance with the procedure prescribed in the code for the trial before a court of session.

Trial by Special Court to have precedence. 10. The trial of any offence under this Act by a Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference of the trial of such other case and accordingly the trial of such other cases shall remain in abeyance.

Power to transfer cases to regular Courts.

II. Where, after taking cognizance of an offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code, and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Appeal.

- 12. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgement, sentence or order, not being an interlocutory order, of a Special Court to the High Court.
- (2) Every appeal under this Section shall be preferred within thirty days from the date of the judgement sentence or order.

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Appointment of Competent Authority.

13. The State Government may appoint any of its officer, in Home Department, not below the rank of Secretary to Government, to be the Competent Authority for the purposes of section 14

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14. (1) A Police officer not below the rank of Superintendent of Police supervising the investigation of an organised crime under this Act may submit an application in writing to the competent Authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer when such interception may provide or has provided evidence of any offence involving an organised crime.

- (2) Each application shall include the following information:-
 - (a) the identity of the investigative or law enforcement officer making the application, and the head of the department authorizing the application.
 - (b) a statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including.
 - (i) details as to the offence of organised crime that has been, is being or is about to be committed;
 - (ii) a particular discription of the nature and location of the facilities from which or the place where the communication is to be intercepted;
 - (iii) a particular description of the type of communications sought to be intercepted; and
 - (iv) the identity of the person, if known, committing the offence of organised crime whose communications are to be intercepted.
 - (c) a statement as to whether or not other modes of enquiry or intelligence gathering have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the indentity of those connected with the operation of interception;
 - (d) a statement of the period of time for which the interception is required to be maintained. If the nature of the enquiry is such that the authorization for interception should not automatically terminate when the discribed type of communication has been first obtained, a perticular discription of facts establishing probable cause to believe that additional communications of the same type will occur thereafter.
 - (e) a statement of the facts concerning all previous applications known to the individual authorising and making the application, made to the Competent Authority for authorization to intercept, or for approval of interceptions of, wire, electronic or oral communications involving any of the same persons, facilities or places specified in the application and the action taken by the Competent Authority on each such application; and
 - (f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.
- The competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

Authorization of interception of wire electronic or oral Communication.

- (4) Upon such application, the Competent Authority may after recording the reasons in writing reject the application, or issue an order as requested or as modified, authorising or approving interception of wire, electronic or oral communications, if the Competent Authority determines on the basis of the facts submitted by the applicant that
 - (a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence discribed and made punishable under sections 3 and 4 of this Act;
 - (b) there is a probable cause for belief that particular communications concerning that offence will be obtained through such interception;
 - (c) normal modes of enquiry and intelligence gathering have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception.
 - (d) there is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used or are about to be used, in connection with the commission of such offence are listed in the name of or commonly used by such person.
- (5) Each order by the Competent Authority authorizing or approving the interception of any wire, electronic or oral communication under this section shall specify;
 - (a) the identity of the person, if known, whose communications are to be intercepted;
 - (b) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;
 - (c) a particular description of the type of communication sought to be intercepted and a statement of the particular offence to which it relates;
 - (d) the identity of the agency authorised to intercept the communications, and of the person authorising the application; and
 - (e) the period of time during which such interception is authorised, including a statement as to whether or not the interception shall automatically terminate when the discribed communication has been first obtained.
- (6) The Competent Authority shall immediately after passing the order under sub-section (4), but in any case not later than seven days from the passing of the order, submit a copy of the same to the Review Committee constituted under section 15 alongwith all the relevant underlying papers, record and his own findings, etc. in respect of the said order for consideration and approval of the order by the Review Committee.
- (7) An order authorising the interception of a wire, electronic or oral communications under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service landlord, custodian or other person shall

furnish to the applicant, forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusctively and with a minimum of interference with the services that such service provider, landlord, custodian or person is providing to the person whose communications are to be intercepted.

- No order issued under this section may authorise or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorisation, nor in any event longer than sixty days. Such sixty days period shall begin on the day immediately perceding the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is issued, whichever is earlier. Extension of an order may be granted but only upon an application for an extension is made in accordance with sub section (1) and the competent Authority making the findings required by sub-section (4). The period of extension shall be no longer than the Competent Authority deems necessary to achieve the purpose for which it was granted and in no event for longer than sixty days at a time. Every order and extension thereof shall contain a provision that the authorisation to intercept shall be executed as soon as practicable and shall be conducted in such a way or manner as to minimise the interception of communications not otherwise subject to interception under this section and must terminate upon attainment of the authorized objective, or in any even on expiry of the period of order. In the event the intercepted communication is in a code or foreign language, and an expen in that foreign language or code is not reasonably available during the interception period, minimisation may be accomplished as soon as practicable after such interception. An interception under this section may be conducted in whole or in part by public servant, or by an individual operating under a contract with the State Government acting under the supervision of the investigative or law enforcement officer authorised to conduct the interception.
- (9) Whenever an order authorising interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorised objective and the need for continued interception. Such reports shall be made at such intervals as the Competent Authority may require.
- (10) Notwithstanding anything contained in any other provision of this section, an officer not below the rank of Additional Director General of Police who reasonably determines that -
 - (a) an emergency situation exists that involves -
 - (i) immediate danger of death or serious physical injury to any person;
 - (ii) conspiratorial activities threatening the security or interest of the state; or
 - (iii) conspiratorial activities, characteristic of organised crime, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorising such interception can, with due deligence, be obtained and

- (b) there are grounds upon which an order could be issued under this section to authorise such interception, may authorise, in writing, the investigating Police Officer to intercept such wire, electronic or oral communication, if an application for an order approving the interception is made in accordance with the provisions of sub-section (1) and (2) within fortyeight hours after the interception has occurred, or begins to occur,
- (11) In the absence of an order approving the interception made under sub-section (10), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier. In the event where an application for permitting interception is rejected under sub-section (4) or an application under sub-section (10) for approval is rejected, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.
 - (12)(a) The contents of any wire, electronic or oral communication intercepted by any means authorised by this section shall, if possible be recorded on tape or wire or other comparable device. Recording of the contents of any wire, electronic or oral communication under this sub-section shall be done in such a way as will protect the recording from edition or other alterations. Immediately upon the expiration of the period of order, or extension thereof, such recordings shall be made available to the Competent Authority issuing such order and shall be sealed under his directions. Custody of the recording shall be wherever the Competent Authority orders. They shall not be destroyed except upon an order, of the Competent Authority and in any event shall be kept for ten years.
 - (b) Applications made and orders issued under this section shall be sealed by the Competent Authority. Custody of the applications and orders shall be wherever the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years.

The Competent Authority upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the Competent Authority determines to be in the interest of justice.

(13) Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this section shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this section or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceedings in any court unless each party, not less than ten days before trial, hearing or proceeding, has been furnished with a copy of the order of the Competent Authority and accompanying application, under which the interception was authorised or approved;

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Provided further that, this ten days period may be waived by the judge, trying matter, if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information.

Explanation.—For the purposes of this section —

- (a) 'wire communication' means any aural transfer made in whole or part throught the use of facilities for the transmission of communication by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication;
- (b) 'oral communication' means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstance justifying such expectation but such term does not include any electronic communication;
- (c) 'electronic communication' means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photo electronic or photo optical system that effects inland or foreign commerce but does not include;
 - (i) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand set and the base unit;
 - (ii) any wire or oral communication;
 - (iii) any communication made through a tone only paging device; or
 - (iv) any communication from a tracking device;
- (d) 'intercept' means the oral or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device.
- 15. (1) There shall be a Review Committee to review every order passed by the Competent Authority under section 14.
 - (2) The Review Committee shall consist of the following ex-officio members, namely:—

(i) the Chief Secretary to Government

Chairman

(ii) the Additional Chief Secretary or the Senior Most Principal Secretary, as the case may be, in the Home Department.

Member

(iii) Secretary And Remembrancer of Legal Affairs, Legal Department.

Member

(3) Every order passed by the Competent Authority under Section 14, placed before the Review Committee, shall be considered by the Review Committee within ten days after its receipt, to decide whether the order, authorising or approving the application under sub-section (4) of section 14; for interception or disapproving the interception made under sub-section (10) of that section in emergency situation, passed by the Competent Authority was necessary, reasonable and justified.

Constitution of Review Committee for review of authorisation orders.

(4) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed necessary may, by order in writing, either approve the order passed by the Competent Authority or may issue order disapproving the same. On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be forthwith discontinued. The intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.

Interception and disclosure of wire, electronic or oral communications prohibited.

- 16. Except as otherwise specifically provided in section 14, any police officer who.
 - (a) intentionally intercepts, endeavours to intercept, or procures' any other person to intercept or endeavour to intercept any wire, electronic or oral communication;
 - (b) intentionally uses, endeavours to use, or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when
 - (i) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or
 - (ii) such device transmits communications by radio, or interferes with the transmission of such communication;
 - (c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this sub-section.
 - (d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication in violation of this sub-section; or
 - (e) (i) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, intercepted by means authorised by section 14;
 - (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation under this Act;
 - (iii) having obtained or received the information in connection with a criminal investigation; and
 - (iv) with intent to improperly obstruct, impede, or interfere with a duly authorised criminal investigation; or
 - (f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of disapproval by the Review Committee under sub-section (4) of section 15,

shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine upto rupees fifty thousand.

Special Rules of evidence.

17. (1) Notwithstanding anything to the contrary contained in the Code, or the Indian Evidence Act, 1872, for the purposes of trial and punishment for offence under this Act or connected offence, the Court may take into consideration as having probative value the fact that the accused was:

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- (a) on any previous occasion bound under section 107 or section 110 of the Code;
- (b) detained under any law relating to preventive deterntion; or
- on any previous occasion was prosecuted in the Special Court under this Act.
- (2) Where it is proved that any person involved in an organised crime or any person on his behalf is or has any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court shall, unless contrary is proved presume that such property of pecuniary resources have been acquired or derived by his illegal activities.
- (3) Where it is proved that the accused has kidnapped or abducted any person, the Special Court presume that it was for ransom.
- (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the superintendent of police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Certain confessions made to police officer to be taken into consideration.

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

- (2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.
- (1) explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.
- (4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.
- (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.
- (6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.

Protection of witnesses.

- 19. (1) Notwithstanding anything contained in the Code, the proceedings under this Act may be held in camera, if the Special Court so desires.
 - (2) A Special Court may, on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of any witness secret.
 - (3) In particular, and without prejudice to the generality of the provisions of sub-section (2) the measures which a Special Court may take under the sub-section may include,
 - (a) the holding of the proceedings at a place to be decided by the Special Court;
 - (b) the avoiding of the mention of the names and addresses of the witnesses in its order or judgements of in any records of the case accessible to public;
 - (c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed;
 - (d) that, it is in the public interest to order that all or any of the proceedings pending before such a Court shall not, be published in any manner.
 - (4) Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for term which may extend to one year and with fine which may extend to one thousand rupees.

Forfeiture and attachment of property.

20.

- Where a person has been convicted of any offence punishable under this Act, the Special Court, may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the State Government, free from all encumbrances.
- (2) Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him, to pass an order that all or any properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction the properties so attached shall stand forfeited to the State Government, free from all encumbrances.
- (3) (a) If, upon a report in writing made by an investigating police officer with the approval of the supervisory officer referred to in sub-section (1) of section 14 any Special Court has reason to believe that any person who has committed an offence punisable under this Act has absconded or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in section 82 of the code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the publication of such proclamation:

Provided that, if the investigating police officer concerned fails to arrest the accused, who has absconded or is concealing himself, within a period of three months from the date of registering the offence against such person, the officer shall, on the expiry of the said period, make a report to the Special Court for issuing the proclamation.

- 1 to 1 2

(b) The Special Court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, movable or immovable or both, belonging to the proclamed person, and thereupon the provisions of section 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that code.

- (c) If, within six months from the date of attachment, any person, whose property is, or has been, at the disposal of the State Government under sub-section (2) of section 85 of the Code, appears voluntarily or is apprehended and brought before the Special Court by whose order the property was attached, or the court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the specified time therein, such property or, if the same has been sold, the net proceeds of the same and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.
- 21. (1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act, shall be deemed to be cognizable offence within the meaning of clause (c) of section 2 of the Code and "Cognizable case" as defined in that clause shall be construed accordingly.

Modified application of certain provisions of the Code.

- (2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2),—
 - the references to "fifteen days", and "sixty days", wherever they occur, shall be construed as references to "thirty days" and "ninety days", respectively;
 - (b) after the proviso, the following proviso shall be inserted namely:

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period ninety days."

- (3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.
- (4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless—
 - (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
 - (b) where the Public Prosecutor oppose the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
- (5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.

- (6) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail.
- (7) The police officer seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reason for seeking such custody and also for the delay, if any, in seeking the Police Custody.

Presumption as to offences under section-3.

- 22. (1) In a prosecution for an offence of organised crime punishable under section 3, if it is proved—
 - (a) that unlawful arms and other material including documents or papers were recovered from the possession of the accused and there is reason to believe that such unlawful arms and other material including documents or papers were used in the commission of such offence; or
 - (b) that by the evidence of an expert, the finger prints of the accused were found at the site of the offence or on anything including unlawful arms and other material including documents or papers and vehicle used in connection with the commission of such offence,

the special Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence of organised crime punishable under subsection (2) of section 3, if it is proved that accused rendered any financial assistance to a person accused of, or reasonably suspected of an offence of organised crime, the Special Court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2)

Cognizance of and investigation into, an offence.

- 23. (1) Notwithstanding anything contained in the code,-
- (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer below the rank of the Deputy Inspector General of Police;
- (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer not below the rank of the Deputy Superintendent of Police.
- (2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police.

Punishment for public servants falling in the discharge of their duties. 24. Whoever being a public servant renders any help or support in any manner in the commission of organised crime as defined in clause (a) of section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstain from taking lawful measures under this Act or intentionally avoids to carry out the directions of any Court or of the superior police officer in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and also with fine.

Overriding effect.

25. The provisions of this Act or any rule made thereunder or any order made under any such rule shall, have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having the force of law.

26. No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder or any order issued under any such rule.

Protection of action taken in good faith.

27. (1) The State Government shall cause an annual report to be prepared giving a full account of;

Annual Report of Interceptions.

- (i) the number of applications for authorisation of interceptions received by the Competent Authority from the Police Department in which prosecutions have been launched;
 - (ii) the number of such applications permitted or rejected;
- (iii) the number of interceptions carried out in emergency situations and the number of ex-post-facto authorisations or approvals granted or rejected in such matters;
- (iv) the number of prosecutions launched based on such interceptions and convictions resulting from such interceptions, alongwith an explanatory memorandum giving general assessment of the utility and importance of the interceptions authorised.
- (2) Such annual report shall be laid by the State Government before the State Legislature within three months of the completion of every calender year:

Provided that, if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the State or to the prevention or detection of any organised crime, the State Government may exclude such matter from being included in such annual report.

28. The High Court may, by notification in the official Gazette, make such rules as it may deem necessary for carrying out the provisions of this Act relating to the Special Courts.

power of High Court to make rules.

29. (1) Without prejudice to the Powers of the High Court to make rule under section 28, the State Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

powers of State Government to make rules

(2) Every rule made under this Act shall be laid, as soon as may be after it is made before, the State Legislature, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid the State Legislature agrees in making any modification in the rule or agrees that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case mey be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kindnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organised crime being very huge, it has had serious adverse effect on our economy. It is seen that the organised criminal syndicates make a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There is reason to believe that organised criminal gangs have been operating in the State and thus, there is immediate need to curb their activities.

It is also noticed that the organised criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice.

- 2. The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organised crime. It is, therefore, necessary to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime.
 - 3. Hence, this Bill is intended to achieve the above objectives.

Gandhinagar, Dated the 31st January, 2003. DOLATBHAI PARMAR M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposals for delegation of legislative powers namely:-

Clause 5.— Under this clause power is taken to the State Government to constitute, by notification in the Official Gazette, one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified by it.

Clause 28.—Under this clause power is taken to the High Court to make, by notification in the Official Gazette, such rules as it, may deem necessary, for carrying out the provisions of the Bill relating to Special Courts.

Clause 29.— Under this clause power is taken to the State Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the Bill.

2. The above mentioned proposals for delegation of legislative power are of a normal character.

Gandhinagar, Dated the 31st January, 2003.

DOLATBHAI PARMAR M.L.A.

FINANCIAL MEMORANDUM

Clause 5 of the Bill provides for the constitution of Special Courts by the State Government and also for appointment of Judges and Additional Judges of those Courts. Clause 8 of the Bill provides for appointment of public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors by the State Government.

2. The expenditure towards the setting up of Special Courts by the State Government and towards salaries and allowances of the Judges, Public Prosecutors and staff of such courts will be defrayed out of the Consolidated Fund of the State. As it is not possible at this stage to visualise the number of Special Courts that may have to be established, it is not possible to give an estimate of actual expenditure that may have to be incurred in this behalf.

Gandhinagar, Dated the 31st January, 2003. DOLATBHAI PARMAR M.L.A.

Gandhinagar, Dated: 6th March, 2003.

D. M. PATEL,
Secretary,
Gujarat Legislative Assembly,

Government Central Press, Gandhinagar.





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PART - V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 6th March, 2003. by Shri Usmangani Devdiwala is published under rule 127-A of the Gujarat Legislative Assembly Rules for general information

GUJARAT BILL NO. 19 OF 2003.

THE GUJARAT WELFARE AND PROTECTION OF MINORITIES BILL, 2003.

A BILL

to provide for the welfare and protection of life and properties of minority communities in the State of Gujarat and for matters connected therewith.

It is hereby enacted in the Fifty fourth Year of the Republic of India as follows:-

- 1. (1) This Act may be called the Gujarat Welfare and Short title, extent and commencement.
 - (2) It extends to the whole of the State of Gujarat.
 - (3) It shall come into force at once.
- 2. (a) In this Act, unless the context otherwise requires. Definitions. "Family Member" means and includes a husband, wife, son,

V- Ex.-19-1

19 -1

daughter, mother, father, brother, sister or any other person with whom the deceased was residing.

- (b) "Minority Community" means a group of persons belonging to a community based on religion other than Hindus.
- Special care to protect minority.
- The State Government shall take special care to protect the life and properties of minority community from any attack or assault thereon and for this purpose the State Government may arrange for special squads of police.
- Responsibility for communal disturbance.
- (1) It shall be the paramount duty of the District Magistrate to maintain communal harmony and to keep a careful watch and vigilance over the communal atmosphere in his district.
- (2) The District Magistrate shall be responsible for any communal disturbance in his District and shall be liable for summary suspension during the pendency of the investigation about his vigilance.
- Offence and penalties therefor.

· 5.

- (1) Any attack or assault on the life or properties of the minority community shall be a cognizable offence under this Act and shall be tried in the 'Court of the Magistrate not inferior to the Judicial Magistrate of First Class and any person directly or indirectly involved therein shall, on conviction; be punished with imprisonment for the term of not less than seven years.
- (2) Any person or institution belonging to the minority community may lodge a complaint for any offence under this Act.
- Compensation. 6.
- The State Government shall pay as a compensation in cash and within three months of the incident, if it is a loss of life Rs. 5 Lacs each, if it is a physical injury. Rs. 50,000 each and if it is a loss or damage of properties the actual market value of the properties lost or damaged during the communal disturbance or violence,

Separate Department.

7. There shall be set up a separate and full-fledged Department at the Sachivalaya level at Gandhinagar entrusted for looking after and implementing the ways and means and the schemes of the educational, cultural, social economic and all-round development and welfare of minority communities und the Urdu and other languages of the minority communities.

Power to make 8. Rules.

- (1) The State Government may, make rules for carrying out the purposes of this Act.
- (2) All rules made under this Act, shall be published in the Official Gazette and unless they all are expressed to

come into force on a particular day, shall come into force on the day on which they are so published.

- (3) All rules made under this Act shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the Legislature or to such modifications as the Legislature may make during the session in which they are so laid or the session immediately following.
- (4) Any rescission or modification so made by the State Legislature shall be published in the Officail Gazette and shall thereupon taken effect.

STATEMENT OF OBJECTS AND REASONS

The lives and properties of persons belonging to the Minority communities deserve to be protected meticulously. India is a secular State and hence all communities are equal. In communal disturbances and riots the minority communities have generally to suffer. The District authorities in most of the cases are aware of the communal tension prevailing. They however, do not take prompt preventive measures, which result into heavy loss of lives and properties of the minorities The summary action is, therefore, proposed against the District Magistrate who is responsible for maintaining law and order situation in the District.

The Government of a secular State should also look into the developmental and welfare activities of minority communities who are living economically, socially and educationally backward life since the Independence.

During the communal disturbances or violence many a persons of minority communities become the victims either in the form of physical injuries or loss or damage of properties and have to live a pitiable life thereafter. It is therefore proposed to provide for payment of compensation in cash and immediately within three months of the incident in which a person of minority communities has to lose life or either suffer physical injuries or loss or damage of properties either in communal disturbances, anti-minority violence or police firing. This provision will help to provide some compensation or relief to the persons affected and it will also discourage the forces behind the communal disturbances or violence in the State. It is also proposed to set up a separate Department at Sachivalaya level for the welfare activities of the minority communities in the State on the line of the Scheduled Castes and Scheduled Tribes in the Government Department of Social Justice and Empowerment Department. The States of U.P, and West Bengal and some other States in India have also set up such Departments.

PART V

For the all-round development of Gujarat and for the upliftment and welfare of the people of Gujarat, it is essential to maintain law and order and peace in the State of Mahatma Gandhi, Father of the Nation and great saint and propounder of non-violence.

Hence this Bill.

Dated: 1-2-2003 Gandhinagar.

USMANGANI DEVADIWALA M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION.

Clause 8 of the Bill empowers the State Government to make rules for carrying out the purposes of the Act.

The delegation of Legislative powers is essential and is of normal character.

Dated: 1-2-2003 Gandhinagar.

USMANGANI DEVADIWALA M.L.A.

FINANCIAL MEMORANDUM

For the implementation of the provisions of the Bill and for its efficient functioning, a financial provision for a recurring expenditure of Rs. 50 lacs is estimated from the Consolidated Fund of the State.

Dated: 1-2-2003 Gandhinagar.

USMANGANI DEVADIWALA M.L.A.

Gandhinagar,

Dated: 6th March, 2003.

D. M. PATEL, Secretary, Gujarat Legislative Assembly,





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 6th March, 2003 by Shri Usmangani Devdiwala MLA is published under rule 127-a of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 20 OF 2003.

THE GUJARAT PROHIBITION OF TRANSFER OF IMMOVABLE PROPERTY AND PROVISION FOR PROTECTION OF TENANTS FROM EVICTION FROM PREMISES IN DISTURBED AREAS (REPEAL) BILL, 2003.

A BILL

to repeal the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 in its application to the State of Gujarat.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas (Repeal) Act, 2003.

(2) It shall come into force at once.

2. The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 is hereby repealed.

Short title and commence-ment.

Repeal of Guj. 12 of 1991.

STATEMENT OF OBJECTS AND REASONS

The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas Act, 1991 has been enacted by the State Legislature with a view to declare certain transfer of Immovable Properties in the disturbed Areas of the State to be void and to prohibit temporarily the transfers of Immovable Properties in such areas. Originally, the aforesaid provisions had been made by the Act of 1986 as the riots had then occurred in certain areas of the State during the period of March, 1985 with a result that mob belonging to one community resorted to riot and violence and thereby had rendered many residential houses and shop belonging to another community unfit for human habitation. Consequently many immovable properties had been transferred under the fear of insecuirty in the disturbed areas at a low price. The 1986 Act was therefore, enacted with a view to making such transfers of immovable properties as void and prohibiting with transfers temporarily. Looking to the statement of objects and reasons appended to the 1986 Bill and the dabates in the House on the Bill on 13th August, 1986, it is quite clear that this legislation was specifically enacted in 1986 in view of the large scale transfers of immovable properties under the fear of insecurity which was caused in the general public in the disturbed areas during that specific period of riots, disturbances and mob violence. The 1991 Act has repealed the 1986 Act and has enacted a permanent legislation to give power to the State Government to declare disturbed areas and prohibit transfer as and when such occasion arises.

The permenet legislation on the subject has created many hardships to the public at large. Under-Section 3 of the aforesaid Act each and every person has to approach the collector office for obtaining previous sanction of the Collector for transfer of property and if the Collector after holding an inquiry for a longer time rejects the application, the person concerned has to file an appeal before the State Government. This created much hardships. Wastage of time and money, Due to this legislation, even genuine transfers are also very much adversely affected. This has also become an instrument for wide-spread corruption and mal-paractices in the Administration. Each and every transfer has to pass through a clumsy and lengthy process. Due to the provisions of the Act, so many cases of transfers are lying at the Collector Office or at the Sachivalaya for a very long-period and thereby the Government also loses a sizable revenue due to imposition of such restriction. Moreover, section 3 of the Act delegates the power of declaring the disturbed areas to the State Government. This delegation is not proper as the State Government can thereby declare the disturbed areas at any time by issuing just a notification and put the public at large of the area in a very much hardship even if there is no riot, disturbances or mob violence. There have been instances of the State Government publishing such a notification and declaring disturbed areas even if the whole State has remained very much peaceful. Such steps of the State Government have also been challanged in the Court of Law recently.

To avoid the mis-use by the authorities, the hardships and inconvenience to the Public at large and the wide - spread corruption and malpractices in the administration, the aforesaid Act is proposed to be repealed with immediate effect.

Hence this Bill.

Gandhinagar,

Dated 1st February, 2003.

USMANGÁNI DEVDIWALA

M.L.A.

Gandhinagar,

Dated: 6th March, 2003.

D. M. PATEL,

Secretary,
Gujarat Legislative Assembly.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.





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GUJARAT BILL NO. 21 OF 2003.

THE GUJARAT ONE JOB IN EACH LOWER INCOME GROUP FAMILY BILL, 2003.

ABILL

to provide for a job at least to one person in each lower income group family in the State of Gujarat

It is hereby enacted in the Fifty-fourth Year of the Republic of India as

- 1. (1) This Act may be called the Gujarat one Job in Each Lower Short title, Income Group Family Act, 2003.
 - extent and commence-

- (2) It extends to the whole of the State of Gujarat.
- (3) It shall come into force at once.
- 2. In this Act, unless the context otherwise requires:-

Definitions.

- (a) "adult person" means a person who has attained the age of eighteen
- (b) "family" includes wife, son, daughter, father, mother, brother or sister of a person and residing with him;

V- Ex.-21-1

- (c) "lower income group family" means a family whose yearly income per member of the family is less than Rs. 10,000;
 - (d) "prescribed" means prescribed by rules made under this Act;
- (e) "scheme" means a scheme prepared to give at least one job in each lower income group family.

Report on unemployment condition. Scheme.

- 3. The State Government shall prepare and publish a report on unemployment condition and yearly income in each family in the State of Gujarat within six months from the date of coming into force of this Act.
- 4. (1) On preparation and publications of the report under section 3, the State Government shall prepare and publish within three months a scheme for providing a job carrying a salary of Rs. 1500 per month at least to one adult person in each lower income group family.
- (2) The scheme shall be prepared and published in such manner as may be prescribed.

One job in

- 5. (1) After publication of the scheme under section 4, the State each family. Government shall take steps to provide jobs as per the scheme.
 - (2) If the State Government is unable to provide a job carrying a salary of Rs. 1500 per month to one adult person in a lower income group family. within one year from the date of operation of this Act, an un-employment allowance at the minimum rate of Rs. 50 per day shall be paid to such family until a job is provided to an adult person of such family.

Implementation of Act and scheme.

- 6. (1) The State Government shall appoint implementing agencies for implementation of the Act and the scheme in every district in such manner as may be prescribed.
- (2) The State Government shall appoint such officers and servants as it may deem necessary for carrying out the purposes of this Act.

Power to make rules.

- 7. (1) The State Government may, by notification, in the Official Gazette make rules to carry out all or any of the purposes of this Act.
- (2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.
- (3) Any rescission or modification so made by the Legislature shall be published in the Official Gazette and shall thereupon take effect.

STATEMENT OF OBJECTS AND REASONS

Unemployment is increasing day by day amongst both the educated and un-educated people. Thousands of young brilliant persons are wasting their time without any work. Similarly landless agricultural labourers and halpatis are without work for a considerable period in a year. About 50% of our population is living below poverty line, as a result of which the economic, social, educational and cultural growth is hampered.

To avoid this situation it is very necessary that at least one adult person from each lower income group family, whose yearly income per member of the family is less than Rs. 10,000 is given job and in the alternative the unemployment allowance.

Hence this Bill.

Dated 1st February, 2003. Gandhinagar.

USMANGANI DEVDIWALA

M.I.A

FINANCIAL MEMORANDUM

Clause 5 of the Bill provides for providing one job in each lower income group family and in the alternative unemployment allowance. Clause 6 provides for appointment of officers and servants for carrying out the purposes of the Act.

These provisions if enacted is likely to involve expenditure from the Consolidated Fund of the State As the exact involvement of the expenditure to be incurred by the State Government depends also upon the survey to be carried out by Government under Section 3, it is difficult to give any estimate of recurring or non-recurring expenditure at present.

Dated 1st February, 2003. Gandhinagar.

USMANGANI DEVDIWALA

M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-Clause (2) of clause 4 empowers the State Government to prescribe the manner in which the scheme shall be prepared and published.

Sub-Clause (1) of clause 6 empowers the State Government to prescribe the manner in which the implementing agencies shall be appointed.

Sub-Clause (2) of clause 6 empowers the State Government to appoint Officers and Servants for carrying out the purposes of the Act.

Sub-Clause (1) of clause 7 empowers the State Government to make rules for carrying out the purposes of the Act.

The delegation of Legislative powers as aforesaid is necessary and of normal character.

Dated 1st February, 2003. Gandhinagar

USMANGANI DEVDIWALA

Gandhinagar,

Dated: 6th March, 2003.

D. M. PATEL,
Secretary,
Gujarat Legislative Assembly.





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The following Bill which was introduced on the 6th March, 2003 by Shri Usmangani Devdiwala MLA is published under rule 127-a of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 22 OF 2003.

THE GUJARAT PUBLIC ENTERPRISES SERVICE COMMISSION BILL, 2003.

A BILL

to provide for the constitution of a Commission for the selection of staff for appointment to posts in public enterprises and for matters connected therewith and incidental thereto.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

- 1. (1) This Act may be called the Gujarat Public Enterprises Service Short title Commission Act, 2003.
- (2) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint.
 - 2. In this Act, unless the context otherwise requires:-

Definitions.

commence-

- (a) "chairman" means the Chairman of the Commission.
- (b) "commission" means the Gujarat Public Enterprises Service Commission constituted under sub-section (1) of section 3;

V- Ex.-22-1

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- (c) "Government" means the Government of Gujarat;
- (d) "notification" means notification published in the Official Gazette and the word "notified" shall be construed accordingly;
 - (e) "prescribed" means prescribed by rules made under this Act;
- (f) "public enterprises" means a public enterprise of the State of Gujarat whether created by law or registered under any law for the time being in force.

Constitution of the Gujarat Public Service Commission.

3. (1) The State Government may, by notification, constitue a Commission by the name of the Gujarat Public Enterprises Service Commission.

(2) The Commission shall be a body corporate having perpetual Enterprises succession and a common seal, shall sue and shall be sued by the said corporate name.

(3) The Headquarters of the Commission shall be located at such place as may be prescribed by the Government.

Constitution of the Commission.

- 4. (1) The Commission shall consist of not less than three and not more than nine members of whom one shall be the Chairman, to be appointed by the State Government.
- (2) The Chairman and Members shall be persons who, in the opinion of the Government are man of ability, integrity and understanding and have special knowledge of or practical experience in the public administration or personnel management or industrial management.

Terms and conditions of service Chairman and members.

5. (1) The Chairman or any other member of the Commission shall hold office for a term of three years from the date on which he enters upon his office;

Provided that a person who has held office as Chairman or other member shall, on the expiration of his term of office, be eligible for appointment for another term of three years only:

Provided further that no person who has attained the age of sixty two years shall be eligible to hold office in any capacity, whether as Chairman or other member.

- (2) If the office of the Chairman or any other member becomes vacant by resignation or otherwise or if the Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall until some person is appointed to the vacant office, or, as the case may be, until the Chairman has assumed his duties, be performed by such one of the other members as the Government may appoint for the purpose.
- (3) The Chairman or any other member may resign his office, by writing under his hand, addressed to the Government but he shall continue in office, until his resignation is accepted by the Government.
- (4) The salary of the Chairman and other members shall be such as may be prescribed by the Government and the other terms and conditions of service shall be such as may be prescribed.

Removal of Chairman OF members.

6. The Government may, after making an inquiry in such manner as may be prescribed, remove the Chairman or any other member from his office on any one of the following grounds:-

- (a) misconduct involving moral turpitude;
- (b) insolvency;
- (c) infirmity of mind or body or
- (d) engages during his term of office in any paid employment outside the duties of his office.

Staff of the Commission.

- 7.(1) The Staff of the Commission shall consist of:-
- (a) Secretary, who shall be appointed by the Government; and
- (b) Such other employees as the Commission may, with the previous approval of the Government, appoint from time to time.
- (2) The salary of the Secretary and other employees of the Commission shall be such as may be prescribed.
- (3) The other terms and conditions of service of the Secretary and employees of the commission shall be such as may be prescribed.
- 8. (1) Notwithstanding anything contained in any other law for the time Functions being in force or in any contract, custom or usage to the contrary, it shall be the of the duty of the Commission to select persons for appointment to the posts in the public enterprises.

- (2) It shall be the duty of the Commission to advise the public enterprises on such matters as may be referred to it.
- 9. It shall be the duty of every public enterprise to communicate to the Duty of Commission the vacancies existing at the commencement of this Act and Public estimated total number of vacancies in the public enterprises and such communication shall be sent in respect of all such existing and estimated total Communicate number of various vacancies and which are likely to occur during the unexpired to portion of the year, within one month after such commencement and in respect Commission. of all vacancies such as are likely to occur during each subsequent year within one month after the commancement of such year.

Enterprises

- 10. (1) The manner of selection of the persons for the appointment to Manner of the public enterprise shall be such as may be provided for by regulations.
- (2) The procedure for the conduct of business of the Commission shall be such as may be provided for by regulations.

Selection of persons procedure for the conduct of the business of the Commission.

11. It shall be the duty of the Commission to make recommendations to Duty of each of the public enterprises in such manner as may be specified by regulations for appointments to fill the vacancies, communicated to it by such public to make enterprises.

recommendation.

Communicated vacancies to be filled only on the recommendation of Commission.

12.(1) Appointments to all the vacancies required to be communicated to the Commission under section 9 shall, on or from such date as the Commission may notify in respect of each public enterprises be made by such public enterprise only on the recommendations of the Commission.

Recommendation of commission.

(2) If in any year, the Commission is unable to make recommendations for appointment to all the vacancies communicated to it by a public enterprise under section 9, or if the public enterprise is unable in any year to make appointments on the bases of the recommendations made by the Commission, the vacancies may be cerried forward to the subsequent year.

Effect of recommendation of the Commission.

13. Notwithstanding anything contained in any other law for the time being in force, or in any contract, custom of usage to the contrary, appointments to the posts in public enterprises shall be made on the recommendations of the Commission.

Power to call for record.

14. The Commission may, call for any record, report or any other information from any public enterprises if in its opinion, such record, report or other information is necessary for the efficient discharge of its functions, and the public enterprise shall furnish such record, report or other information to the Commission.

Obligations as Secrecy.

15. The Chairman and members and the Secretary and other employees of the Commission shall maintain strictest secrecy regarding the affairs of the Commission and shall not divulge, directly or indirectly any information of a confidential nature to members of the public unless compelled to do so by any judicial or other authority or unless instructed to do so by superior officer in the discharge of his duties.

Chairman, members etc. to be public servants under Act XLV of 1860. 16. The Chairman, members, the Secretary and other employees of Commission appointed under this Act, shall while acting or purporating to act under this Act be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Proceedings not to be invalidated by reasons of vacancies etc. in the commission or its. committees. 17. No act or proceeding of the Commission or any of its committees shall be deemed to be invalid by reasons or on the ground that the Chairman of the Commission or any member of the Commission or committee, as the case may be, was not entitled to hold or continue in such office, or by reason of such act or proceeding having been done or conducted during the period of any vacancy in office of the Chairman of the Commission or any of the members of the Commission or Committee, as the case may be:

Protection of action taken in good faith. 18. No suit, prosecution or other legal proceedings shall lie against any person for anything, which is in good faith done or intended to be done under this act.

19.(1) The State Government may, notification in the Official Gazette, Power of make rules for carrying out the purposes of this Act.

State' Government Rules.

- (2) The power to make rules conferred by this section shall be subject to make to, the condition of the rules being made after previous publication.
- (3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid, or the session immediately following.
- (4) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.
- 20. (1) The Commission may, by notification in the Official Gazette, Power of make regulations with the previous approval of the State Government for carrying out the purposes of this Act.

Commission to make Regulations.

- (2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters,
 - (a) the terms and conditions of services of the employees of the Commission under sub-section (3) of section 7.
 - (b) the manner of selection of persons for appointment to the posts in the publis enterprise under sub-section (1) of section 10;
 - (c) the procedure for the conduct of business of the Commission under sub-section (2) of section 10;
 - (d) the income and expenditure, budget accounts and audit and annual report of the Commission.

STATEMENT OF OBJECTS AND REASONS

At present each public enterprise (i.e. Government Company, Corporation etc.) selects, its staff in its own ways. There are so many complaints regarding irregularities and malpractices in the Selection of Staff. Some times, method of Selection of Staff is also not scientific. With a view, therefore to avoiding complaints regarding irregularities and malpractices in the selection of the staff for the public enterprises it is considered necessary to establish a Gujarat Public Enterprises Service Commission. The following notes on clauses explain the important provisions of the Bill:-

- Clause 3.- This clause provides for the constitution of the Gujarat Public Enterprises Service Commission, which shall be a body corporate having perpetual succession.
- Clause 4.- This clause provides for the constitution of the Commission with members not less than three and not more than nine.
- Clause 5.- This clause provides for terms and conditions of the Office of Chairman and Members.
- Clause 6.- This clause provides for the removal of members on certain grounds.
 - Clause 8.- This clause provides for the functions of the Commission.
- Clause 9.- This clause imposes the Duty on the Gujarat Public Enterprises to Communicate the vacancies in the Public Enterprises to the Commission.
- Clause 12. This clause provides that the vacancies in a public enterprise shall be filled only on the recommendation of the Commission.
- Clause 16.- This clause provides that the chairman, members and other staffs shall be public servants within the meaning of the Indian Penal Code.
 - Clause 18- This clause is indemnity clause.
- Clause 19. This clause provides for the powers of the State Government to make rules for carrying out the purposes of this Act.

Dated 1st February, 2003. Gandhinagar. USMANGANI DEVADIWALA

M.L.A.

FINANCIAL MEMORANDUM

Sub-Clause (4) of Clause 5 provides for the Salary and allowances and other conditions of service of the Chairman and other members of the Commission.

Sub-Clause (2) and (3) of Clause 7 provides for the Salary and other terms and conditions of services of the Secretary and other employees of the Commission.

These provisions is enacted and brought into operation would involve an estimated annual expenditure of about rupees twenty lakhs from the Consolidated Fund of the State out of which about rupees ten lakhs would be of a recurring nature and about rupees ten lakhs would be of a non-recurring nature.

Dated 1st February, 2003. Gandhinagar.

USMANGANI DEVADIWALA

M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 1.-Sub clause (2) of this clause empowers the State Government to appoint the date from which the Act shall come into force.

Clause 3.-Sub-caluse (3) of this clause empowers the State Government to prescribe the place at which the Headquarters of the Commission, shall be located.

Clause 5.-Sub-clause (4) of this clause empowers the State Government to prescribe the salary of the Chairman and other members of the Commission and the other terms and conditions of their service.

Clause 6.-This clause empowers the State Government to prescribe the manner in which the inquiry shall be made.

Clause 7.-(i) Sub-clause (2) of this caluse empowers the State Government to prescribe the salary of the Secretary and other employees of the Commission.

(ii) Sub-clause (3) of this clause empowers the State Government to prescribe other terms and conditions of the service of Secretary and other employees of the Commission.

Clause 10.-(i) Sub-clause (1) of this clause empowers the Commission to provide by regulation the manner of election of the persons for the appointment.

(ii) Sub-clause (2) of this clause empowers the Commission to provide by regulation the procedure for the conduct of its business.

Clause 11.-This clause empowers the Commission to specify the manner by regulations for making its recommendations to the public enterprises.

Clause 19.-This clause empowers the State Government to make Rules for carrying out the purposes of this Act.

Clause 20.-This Clause empowers the Commission to make regulations with the previous approval of the State Government.

Dated 1st February, 2003. Gandhinagar.

USMANGANI DEVADIWALA

Gandhinagar,

Dated: 6th March, 2003.

D. M. PATEL,
Secretary,
Gujarat Legislative Assembly.

GOVERNMENT CENTRAL PRESS, GANDHINAGAR.





The Gujarat Covernment Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 6th March, 2003 by Shri Usmangani Devdiwala MLA is published under rule 127-4 of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO 23 OF 2003.

THE GUJARAT PROTECTION OF INTERESTS OF DEPOSITORS (In Financial Establishments) BILL, 2003.

A BILL

to provide for the protection of the interests of depositors of the Financial Establishments and in the State of Gujarat for matters relating thereto.

It is hereby enacted in the Fifty fourth Year of the Republic of India as follows:—

- 1. (1) This Act may be called the Gujarat Protection of interests of Depositors (In Financial Establishments) Act, 2003.
 - (2) It extends to the whole of the State of Gujarat.
 - (3) It shall come into force at once.
- 2. In this Act, unless the context otherwise requires-
- (a) "competent Authority" means the Competent Authority appointed under section 5;
- (b) "deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the Form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include-

Short title, extent and commencement.

Definitions.

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GUJARAT GOVERNMENT GAZETTE EX., 6-3-2003

[PART V

(i) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992:

15 of 1992.

- (ii) amounts contributed as capital by partners of firm;
- (iii) amounts received from a Scheduled Bank or a Co-operative Bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949:

10 of 1949.

- (iv) any amount received from,
 - (a) the Industrial Development Bank of India.
 - (b) the Gujarat State Financial corporation,
- (c) any financial institution specified by or under section 6A of the Industrial Development Bank of India Act, 1964, or
- (d) any other institution that may be specified by the Government in this behalf;
 - (v) amounts received in the ordinary course of business by way of, -
 - (a) security deposit,
 - (b) dealership deposit,

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- (c) earnest money,
- (d) advance against order for goods or services;
- (vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State; and
 - (vii) any amount received by way of subscriptions in respect of a Chit.

Explanation-1. - "Chit" has the meaning as assigned to it in clause (b) of section 2 of the Chit Funds Act, 1962;

40 of 1982.

Explanation-II. - Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause;

10 of 1949.

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- (c) "designated court" means the Designated Court Constituted under section 6;
- (d) "financial establishment" means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a Co-operative society owned or controlled by

any State Government or the Central Government or a banking company as defined under clause (c) of section 5 of the Banking Regulations Act, 1949;

- (e) "Government" means the Government of the State of Gujarat.
- 3. Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit every person including the promotor, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees.

Fraudulent default by Financial Establishment

Explanation. - For the purpose of this section, a Financial Establishment, which commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agree against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such default due to its inability arising out of impracticable or, commercially not viable promises made while accepting such deposits in such a manner as it involves inherent risk in recovering the same when needed shall, be deemed to have committed a default or failed to render the specific service, fraudulently.

- 4. (1) Notwith standing anything contained in any other law for the time being in force,
- (i) Where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed,

Attachment of properties on default of return of deposits.

Sec. 2 45

- (a) to return the deposit after maturity or on demand by the depositor; or
 - (b) to pay interest or other assured benefit; or
 - (c) to provide the service promised against such deposit; or
- (ii) where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them;

and if the Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the Government may, in order to protect the interest of the depositors of such Financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or other property

believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, director or partner or manager or member of the said Financial Establishment as the Government may think fit.

- (2) On the publication of the order under sub-section (1), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the Government, pending further order from the Designated Court.
- (3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Suprintendent or Commissioner of Police, as the case may be, for investigation.

Appointment of Competent Authority.

- 5. (1) The Government may while issuing the order under sub-section (1) of section 4, appoint any of its officers not below the rank of the Deputy Collector, as the Competent Authority, to exercise control over the monies and the properties attached by the Government under section 4, of a Financial Establishment.
- (2) The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.
- (3) The Competent Authority shall, within thirty days from the date of the publication of the said order, apply to the Designated Court, accompained by one or more affidavits stating the grounds on which the Government has issued the said order under section 4 and the amount of money or other property believed to have been acquired out of the deposits and the details, if any, of persons in whose name such property is believed to have been invested or acquired or any other property attached under section 4, for such further orders as found necessary.

Designated Court.

- 6. (1) For the purposes of this Act, the Government may, with the concurrence of the Chief Justice of the Gujarat High Court, by notification in the Official Gazette, constitute one or more Designated Court in the cadre of a District and Sessions Judge for such area or areas or for such case or class or group of cases, as may be specified in the notification.
- (2) No court including the court constituted under the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, other then the Designated Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.
- (3) Any pending case in any other court to which the provisions of this Act apply shall, on the date of coming into force of this Act, stand transferred to the Designated Court.

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7. (1) Upon receipt of an application under section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under section 4, a notice accompanied by the application and affidavits and of the evidence, if any recorded, calling upon the said Establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute.

Powers of Designated Court regarding attachment.

- (2) The Designated Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notice is issued under sub-section (1), calling upon all such persons to appear on the same date as that specified in the notice and make objection if they so desire to the attachement of the property or any portion thereof, on the ground that they have interest in such property or portion thereof.
- (3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under sub-section (4) or subsection (6).
- (4) The Designated Court shall, if no cause is shown and no objections are made under sub-section (3), on or before the specified date, forthwith pass an order making the order of attachment absolute, and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from out of the property attached.
- (5) If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respect, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 1908 and exercise all the powers of a court in hearing a suit under the said Code and any person making an objection shall be required to, adduce evidence to show that on the date of the attachment he had some interest in the property attached.
- (6) After investingation under sub-section (5), the Designated Court shall pass an order either making the order of attachment passed under sub-section (1) of section 4 absolute or varying it by releasing a portion of the property from attachment or cancelling the order of attachment:

Provided that the Designated Court shall not release from attachment any interest, which it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has in the property, unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for repayment to the depositors of such Financial Establishment.

5 of 1908.

Attachment of property of malafide transferees.

- 8. (1) Where the assets available for attachment of a Financial Establishment or other person referred to in section 4 are found to be less than the amount or value which such Financial Establishment is required to re-pay to the depositors and where the Designated Court is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said Financial Establishment has transferred (whether before or after the commencement of this Act) any of the property otherwise than in good faith and for consideration, the Designated Court may, by notice, require any transferee of such property (whether or not he received the property directly from the said Financial Establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.
- (2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in subsection (5) of section 7, the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the Designated Court shall order the attachment of so much of the said transferee's property as is in the opinion of the Designated Court equivalent to the proper value of the property transferred.

Security in lieu of attachement.

9. Any Financial Establishment or person whose property has been or is about to be attached under this Act may, at any time, apply to the Designated Court for permission to give security in lieu of such attachment and where the secutiry offered and given is, in the opinion of the Designated Court, satisfactory and sufficient, it may cancel, the order of attachment or, as the case may be, refrain from passing the order of attachment.

Administration of property attached.

- 10. The Designated Court may, on the application of any person interested in any property attached and vested in the Competent Authority under this Act and after giving the Competent Authority an opportunity of being heard, make such order as the Designated Court condiders just and reasonable for
 - (a) providing from such of the property attached and vested in the Competent Authority as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for expenses connected with the defence of the applicant where criminal procedings have been instituted against him in the Designated Court under section 3;
 - (b) safeguarding, so far as may be practicable the interest of any business affected by the attachment and in particular, the interest of any partners in such business.

Appeal.

11. Any person including the Competent Authority, if aggrieved by an order of the Designated Court; may appeal to the High Court within sixty days from the date of the order.

Special Public Prosecutor. 12. The Government may, by order, appoint one or more Advocates of not less than ten years standing as a Special Public Prosecutor in consultation with the District and Sessions Judge of the concerned District or the Principal Judge of the City Civil and Sessions Court,

for the purpose of conducting the cases in the Designated Court.

13.(1) The designated Court may take congrizance of the offence without the accused being committed to it for trial and, in trying the accused person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1973, for the trial of warrant cases by Magistrates.

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Procedure and powers of Designated Court regarding offences.

2 of 1974. (2) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to the proceedings before a Designated Court and for the purposes of the said provisions a Designated Court shall be deemed to be a Magistrate.

14. Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistant therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

Act to override other laws.

15. No suit or other proceedings shall lie against the Government or the Competent Authority or an officer or employee of the Government for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

16. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act.

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Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the sessions in which it is so laid or the session immediately following, the House agrees in making any modification in the rule or House agree that the rule should not be made, the rule shall have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

17. If any difficulty arise in giving effect to the provisions of this Act, the Government may, as occasion arise, by order, do anything, not inconsistent with the provisions of this Act, which appears to it to be neccessary to remove the difficulty:

Power to remove difficulties.

Provided that, no such order shall be made after the expirty of a period of two years from the date of commencement of this Act.

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GUJARAT GOVERNMENT GAZETTE EX., 6-3-2003 STATEMENT OF OBJECTS AND REASONS

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There has been mushroom growth of Financial Establishments in the State of Gujarat in the recent past. The sole object of these Establishments has been of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented highly attractive rates of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. Many of these Financial Establishments have been defaulting to return the deposits on maturity or to pay interest or render the services in kind, in return, as assured to the public. As such deposits ran into crores of rupees, it had resulted in great public resentment and uproar, creating law and order problem in the State of GUJARAT which is treated as one of the financial markets in India. It is, therefore, expedient to make a suitable special legislation in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of GUJARAT.

Gandhinagar.

Dated the 1st February, 2003

USMANGANI DEVADIWALA, M.L.A.

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MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 5 of the Bill empowers the State Government for the appointment of any of its officers not below the rank of a Deputy Collector as the competent Authority for the purpose of this Act. "

Sub-clause (1) of clause 6 of the Bill empowers the State Government for the constitution of designated courts by notification for such area or areas or for such cases or class of group of cases as may be specified in the notification.

Clause 12 of the Bill empower the State Government to appoint special public prosecutor for conducting the cases in the designated Courts.

Clause 16 of the Bill empowers the State Government to make rules for carrying out the purposes of the Act.

The delegation of Legislative powers as aforesaid is necessary and of normal character.

Gandhinagar. Dated the 1st February, 2003 USMANGANI DEVADIWALA M.L.A.

FINANCIAL MEMORANDUM

Clause 6 of the Bill provides for the constitution of the designated court and clause 12 provides for the appointment of Advocates as Special Public Prosecutor for the purposes of conducting the cases in the designated courts. These provisions, if enacted, and brought into operation, would involve a recurring expenditure of about ten lacs every year from the Consolidated Fund of the State.

Gandhinagar.

USMANGANI DEVADIWALA,

Dated the 1st February, 2003

M.L.A.

Gandhinagar,

D. M. PATEL,

Dated: 6th March, 2003.

Secretary,
Gujarat Legislative Assembly.

Government Central Press, Gendhinagar.





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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART - V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT FREEDOM OF RELIGION BILL, 2003.

GUJARAT BILL NO. 24 OF 2003.

A BILL

to provide for freedom of religion by prohibition of conversion from one religion to another by the use of force or allurement or by fraudulent means and for the matters incidental thereto.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Freedom of Religion Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Definitions.

- 2. In this Act, unless the context otherwise requires, -
- (a) "allurement" means offer of any temptation in the form of -
 - (i) any gift or gratification, either in cash or kind;
 - (ii) grant of any material benefit, either monetary or otherwise;
- (b) "convert" means to make one person to renounce one religion and adopt another religion;
- (c) "force" includes a show of force or a threat of injury of any kind including threat of divine displeasure or social ex-communication;
- (d) "fraudulent means" includes misrepresentation or any other fraudulent contrivance;
- (e) "minor" means a person under eighteen years of age.

Prohibition of forcible conversion.

3. No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use of force or by allurement or by any fraudulent means nor shall any person abet such conversion.

Punishment for contravention of provisions of section 3. 4. Whoever contravenes the provision of section 3 shall, without prejudice to any civil liability, be punished with imprisonment for a term, which may extend to three years and also be liable to fine, which may extend to rupees fifty thousand:

Provided that whoever contravenes the provisions of section 3 in respect of a minor, a woman or a person belonging to Scheduled Caste or Scheduled Tribe shall be punished with imprisonment for a term which may extend to four years and also be liable to fine which may extend to rupees one takh.

Prior permission to be taken from District Magistrate with respect to conversion.

- 5. (1) Whoever converts any person from one religion to another either by performing any ceremony by himself for such conversion as a religious priest or takes part directly or indirectly in such ceremony shall take prior permission for such proposed conversion from the District Magistrate concerned by applying in such form as may be prescribed by rules.
- (2) The person who is converted shall send an intimation to the District Magistrate of the District concerned in which the ceremony has taken place of the fact of such conversion within such period and in such form as may be prescribed by rules.

- (3) Whoever fails, without sufficient cause, to comply with the provisions of sub-sections (1) and (2) shall be punished with imprisonment for a term, which may extend to one year or with fine which may extend to rupees one thousand or with both.
 - 6. No prosecution for an offence under this Act shall be instituted except by or with the previous sanction of the District Magistrate or such other authority not below the rank of a Sub-Divisional Magistrate as may be authorised by him in that behalf.

Prosecution to be made with the sanction of District Magistrate.

7. An offence under this Act will be cognizable and shall not be investigated by an officer below the rank of a Police Inspector.

Offence to be cognizable.

8. (1) The State Government may, by notification in the *Official Gazette*, make rules for carrying out the provisions of this Act.

Power to make rules.

- (2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made, and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.
- (3) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

STATEMENT OF OBJECTS AND REASONS

Reports have been received by the Government that conversions from one religion to another are made by use of force or allurement or by fraudulent means. Bringing in a legislation to prohibit such conversions will act as a deterrent against the anti-social and vested interest groups exploiting the innocent people belong to depressed classes and will enable people to practice their own religion freely. It will also be useful to maintain public order and to nip in the bud the attempts by certain subversive forces to create social tension. The Government has, therefore, decided to enact a law to prevent conversion of religion by use of force or allurement or by fraudulent means.

This Bill seeks to achieve the aforesaid object.

AMIT SHAH

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers in the following respects:-

- Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the *Official Gazette*, the date on which the Act shall come into force.
- Clause 5.- (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the form in which prior permission under this sub-clause is required to be taken;
- (ii) sub-clause (2) of this clause empowers the State Government to prescribe by rules, the form and the time limit within which the person converted is required to give intimation under this sub-clause.
- Clause 8.- Sub-clause (1) of this clause empowers the State Government to make rules for the purpose of carrying out the provisions of the Act.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 11th March, 2003.

AMIT SHAH.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 12th March, 2003. Secretary to the Government of Gujarat. Legislative and Parliamentary Affairs Department.





The Gujarat Government Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART-V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE INDIAN ELECTRICITY (GUJARAT AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 25 OF 2003.

A BILL

further to amend the Indian Electricity Act, 1910 in its application to the State of Gujarat.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Indian Electricity (Gujarat Amendment) Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Amendment of section 26 of IX of 1910.

In the Indian Electricity Act, 1910 in its application to the State of X of 1910. Gujarat (hereinafter referred to as "the principal Act"), in section 26, in sub-section (6), for the words "six months", the words "twelve months" shall be substituted.

Substitution of section 39 of IX of 1910.

> Penalty for theft of energy.

- In the principal Act, for section 39, the following section shall be substituted, namely:-
 - (1) Whoever dishonestly abstracts, consumes, uses or draws any energy,-
 - (a) otherwise than through a meter referred to in section 26.
 - (b) by tampering with such meter or its seals or apparatus or circuits.
 - (c) by manipulating change of phases of the electric supply,
 - (d) by obstracting or interfering in the functioning of such meter,
 - (e) by manipulating any meter, indicator or apparatus,
 - by cutting, damaging or removing insulation of service (f) wire,
 - (g) from a disconnected connection, or
 - (h) by any other means whatsoever,

shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to two lakh rupees or with both; and if it is proved that any artificial means or means not authorised by the electricity utility exist for the abstraction, consumption, use or draw of energy by the consumer or any other person, it shall be presumed, until the contrary is proved that any abstraction, consumption, use or draw of energy has been dishonestly caused by such consumer or person:

Provided that such imprisonment shall not be less than one month and such fine shall not be less than ten thousand

Any officer of electricity utility or any Electrical Inspector authorised in this behalf by the State Government may-

- (a) enter, inspect, break open and search any place or premises in which he has reason to believe that energy has been, is being, or is likely to be, dishonestly abstracted, consumed, used or drawn;
- (b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, is being, or is likely to be used for dishonest abstraction, consumption, use or draw of energy;
- (c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) of this section or section 39A, 39AA or 44 and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.
- (3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure in any domestic place or premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such place or premises.

2 of 1974.

- (4) The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall apply, as far as may be, to searches and seizures under sub-section (2).
- (5) Where, during an inspection of any place or premises under sub-section (2), a consumer or a person is found to have committed an offence under section 39, 39A, 39AA or 44, the electricity utility may cut of the supply to the place or premises and for that purpose cut or disconnect any electric supply line or any other work being the property of the electricity utility and shall discontinue the supply till the time the electricity utility restores the supply in accordance with its conditions of supply.

Explanation I.- For the purpose of this section, the expression "dishonestly" shall have the same meaning as assigned to it in section 24 of the Indian Penal Code and the

expression "dishonest" occurring in this section and section 50A shall be construed accordingly.

Explanation II.- For the purpose of this section, section 39A and sub-section (1) of section 50A, the expression "electricity utility" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948 or a licensee or a person who is authorised under this Act or any other law for the time being in force to supply electricity."

54 of 1948.

Amendment of section 39A of IX of 1910.

4. In the principal Act,-

- (1) section 39A shall be renumbered as sub-section (1) of that section and in sub-section (1) as so renumbered, for the word "Whoever", the words "Whoever including an officer or an employee of an electricity utility" shall be substituted;
- (2) after sub-section (1) as so renumbered, the following sub-section shall be added, namely.-
 - "(2) Where-
 - (a) any inspector or any officer appointed to assist the inspector on whom duty is imposed by the provisions of this Act or any rule made thereunder, or
 - (b) any officer or employee of an electricity utility on whom duty is imposed by the electricity utility

to undertake inspection and testing periodically or maintenance of an installation connected to the supply system of electricity utility, neglects to inspect and test periodically or maintain the installation and such negligence results in the commission of an offence under section 39 or 44, the inspector, officer or employee shall be punishable for offence under section 39A, for abetting an offence under section 39 or, as the case may be, 44."

Insertion of new section 39AA in IX of 1910. 5. In the principal Act, after section 39A, the following section shall be inserted, namely:

"39AA. Whoever attempts to commit an offence punishable under section 39 or section 44 or to cause such an offence to be committed, and in such attempt does any act towards commission of the offence shall be punishable with punishment provided for the offence."

6. In the principal Act, in section 44-

- Amendment of section 44 of IX of 1910.
- (1) for the words "five thousand rupees", the words "two lakh rupees" shall be substituted;
- (2) for the words "fifty rupees", the words "two thousand rupees" shall be substituted;
- (3) the following proviso shall be added at the end, namely:-

"Provided that such imprisonment shall not be less than one month and

- (i) such fine shall not be less than ten thousand rupees, and
- (ii) such daily fine shall not be less than one hundred rupees.".
- 7. In the principal Act, after section 49, the following section shall be inserted, namely:-

Insertion of new section 49AA in IX of 1910.

Penalty for second and subsequent offences. "49AA. If any person convicted of an offence under section 39, 39A, 39AA or 44 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than three months but which may extend to five years and with fine which shall not be less than fifty thousand rupees."

8. In the principal Act, after section 50, following sections shall be inserted, namely:-

Insertion of new sections 50A, 50B, 50C, 50D and 50E in IX of 1910.

Compoundingof Offences. "50A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or section 50, any officer of the electricity utility authorised in this behalf by the electricity utility (hereinafter in this section referred to as 'the authorised officer') may, either before or after the institution of proceedings for any offence punishable under section 39, 39A, 39AA or 44 accept from a consumer or person charged with offence by way of composition of the offence such sum as may be determined by the electricity utility and the sum so determined shall not be-

2 of 1974

- (a) less than the loss suffered by the electricity utility on account of non payment of the sum which would have been chargeable to the consumer or person by the electricity utility if the energy dishonestly abstructed, consumed, used or drawn by committing the offence, had been legally consumed or used by the consumer or person from the supply of energy by the electricity utility, and
- (b) more than five times the loss so suffered:

Provided that the dishonest abstraction, consumption, use or draw of energy during a period exceeding twelve months prior to detection of offence shall not be taken into account for the purpose of determination of the sum to be paid by a consumer or person under this sub-section.

(2) On payment of such sum as may be determined by the authorised officer under sub-section (1), the consumer or person, if in custody, shall be set at liberty and if any proceedings shall have been instituted against the consumer or person in any criminal court, the composition shall be held to amount to an acquittal of the accused person and no further proceedings shall be taken against the accused person in respect of the same offence.

Designation of courts of Judicial Magistrate of the First Class and Metropolitan Magistrates. 50B. (1) For the purpose of providing for speedy trial of specified offences under this Act, in any district or metropolitan area, in the State, the State Government may after consultation with the High Court, by notification in the *Official Gazette*, designate one or more courts of Judicial Magistrate of the First Class or, as the case may be of Metropolitan Magistrate in such district or metropolitan area (hereinafter in sections 50C, 50D and 50E referred to as "the designated court").

Explanation.- For the purpose of this section and sections 50C and 50E, the expression "specified offence" means an offence under section 39, 39A, 39AA or 44.

Powers and procedure of designated courts.

- **50C.** (1) Unless otherwise directed by the High Court, the designated court shall exercise jurisdiction in respect of specified offences only.
- (2) Notwithstanding anything contained in sub-section (1), when trying any case, the designated court may also try any offence other than a specified offence with which the accused may under the Code of Criminal Procedure, 1973 be charged at the same trial.

2 of 1974.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the designated court may, try the specified offence in

2 of 1974.

a summary way in accordance with the procedure prescribed in the said Code and the provisions of the sections 263 to 265 of the said Code, shall, so far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the designated court to pass a sentence of imprisonment for a term not exceeding three years:

Provided further that when, at the commencement of or in the course of a summary trial under this section, it appears to the designated court that the nature of the case is such that a sentence of imprisonment for a term exceeding three years may have to be passed or that it is undesirable to try it in a summary way, the designated court shall after hearing the parties record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

Appeal.

50D. Any person convicted on a trial held by a designated court may appeal to the Court of Session.

Transitory Provision.

- **50E**. (1) All cases involving specified offences committed in a district or a metropolitan area in the State and pending before any court in such district or metropolitan area before the date of the notification issued under sub-section (1) of section 50B (hereinafter referred to as "the said date") shall stand transferred to the designated court having jurisdiction in respect of such district or metropolitan area under section 50B and the designated court to which such proceedings stand transferred shall proceed with such cases from the stage at which they were pending before the said date.
- (2) Nothing in sub-section (1) shall apply to the cases involving specified offences, committed in a district or metropolitan area in which a court of Judicial Magistrate of the First Class or, as the case may be of Metropolitan Magistrate is designated under section 50B and pending in a court other than a designated court, if the whole of the evidence for prosecution is taken before the said date."

STATEMENT OF OBJECTS AND REASONS

The evil of theft of energy in the State has become very widespread. The increasing number of thefts of energy in the State has become a matter of serious concern. In order to eradicate the evil, it is considered necessary to provide for deterrent punishment for the offences relating to theft of energy. For the purpose of providing for speedy trial of such offences, it is considered necessary to designate one or more courts of Judicial Magistrates of the First Class or of Metropolitan Magistrate in the State and to restrict their jurisdiction only in respect of those offences. It is, therefore, proposed to amend the Indian Electricity Act, 1910 in its application to the State.

This Bill seeks to achieve the aforesaid objects.

The following notes on clauses explain the important provisions of the Bill:-

- Clause 3.— (i) The dishonest draw of energy is now sought to be punished alongwith dishonest abstraction, consumption and use of energy and some of the methods adopted for such abstraction, consumption, use or draw of energy are proposed to be indicated. The fine for the offence of theft of energy is proposed to be raised from one thousand rupees to two lakh rupees. The presumption of offence of theft of energy is proposed to be raised in the cases where there exists artificial means or means not authorised by the electricity utility for abstraction, consumption, use or draw of energy;
 - (ii) power is proposed to be taken to an officer of electricity utility or an Electrical Inspector authorised by the State Government to enter, inspect, break open and search any place or premises in which he has reason to believe that an offence of theft of energy is being committed and to seize devices, instruments, wires etc., used for the theft of energy;
 - (iii) power is also proposed to be taken to cut of the supply of energy to the place or premises where, during an inspection, a consumer or person is found to have committed an offence of theft of energy or an offence of interference with meters etc., or an offence of abetment or an attempt of such offence.
- Clause 4.- It is sought to be clarified that abetment of theft of energy even by an officer or employee of electricity utility would be punishable. Provision is made that if an inspector or any officer appointed to assist the inspector or any officer or employee of an

electricity utility neglects to inspect and test periodically or maintain the installation and such negligence results in commission of an offence under section 39 or 44, such inspector, officer or employee shall be punishable for abetment of such an offence.

- Clause 5.- An attempt to commit an offence of theft or an offence of interference with meters, etc. is also proposed to be made punishable.
- Clause 6.- The fine leviable for the offence for interference with meters is proposed to be raised from five thousand rupees to two lakh rupees and daily fine from fifty rupees to two thousand rupees.
- Clause 7.- Provision is proposed for imposition of enhanced penalty for second and subsequent offences relating to theft of energy, interference with meters etc., and abetment or attempt of such offences.
- Clause 8.- (i) A new provision is proposed for compounding of offences on payment of a sum to be determined by the electricity utility, such sum being not less than the loss suffered by the electricity utility on account of non payment of the sum which would have been chargeable to the consumer or person by the electricity utility if the energy which is subjected to theft had been legally consumed or used by the consumer or person from the supply of energy and not more than five times the loss so suffered;
 - (ii) provision is proposed for the trial of offences under sections 39, 39A, 39AA or 44 by such Judicial Magistrates of the First Class and Metropolitan Magistrates who are designated for the purpose by the State Government after consultation with the High Court;
 - (iii) trial of offences is proposed to be by summary procedure;
 - (iv) provision is proposed to be made for an appeal to the court of session from the conviction by the designated court.

MEMORANDUM REGARDING DELEGATED LEGISATION

The Bill involves delegation of legislative powers in the following respects:-

- Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint by notification in the Official Gazette, the date on which the Act shall come into force.
- Clause 8.- Sub-section (1) of new section 50B proposed to be inserted by this clause empowers the State Government to designate by notification in the Official Gazette, one or more courts of Judicial Magistrate of First Class or Metropolitan Magistrate in a district or a metropolitan area.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 12th March, 2003.

SAURABH PATEL.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 13th March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

> THE GUJARAT ELECTRICITY INDUSTRY (REORGANISATION AND REGULATION) BILL, 2003.

GUJARAT BILL NO. 26 OF 2003.

A BILL

to provide for reorganisation and rationalisation of electricity industry in the State of Gujarat and for establishing an Electricity Regulatory Commission in the State for regulating the electricity industry and for matters connected therewith or incidental thereto.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

(1) This Act may be called the Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003.

Short title, extent and commencement.

- It extends to the whole of the State of Gujarat. (2)
- It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

V- Ex.-26-1

26 - 1

Definitions.

- 2. In this Act, unless the context otherwise requires,-
- (a) "Advisory Committee" means a committee constituted under section '41;
- (b) "Central Act" means the Electricity Regulatory Commissions Act, 14 of 199 1998;
- (c) "Central Commission" means the Central Electricity Regulatory Commission established under sub-section (1) of section 3 of the Central Act;
- (d) "Chairperson" means the Chairperson of the Commission;
- (e) "Commission" means the Gujarat Electricity Regulatory Commission established or deemed to be established under section 3;
- (f) "electricity industry" means business or activities of generation, transmission, distribution or supply of electricity, the operation of power system and activities and matters connected thereto;
- (g) "High Court" means the High Court of Gujarat;
- (h) "Licence" means a licence granted under section 20 or deemed to be granted under section 19;
- (i) "Licensee" means a person holding a licence;
- (j) "Local authority" means a municipal corporation, nagar panchayat, municipal council, district panchayat, taluka panchayat, notified area committee or Cantonment Board constituted under the relevant local authority law;
- (k) "Member" means a member of the Commission and includes the chairperson;
- (l) "prescribed" means prescribed by rules;
- (m) "regulations" means regulations made under this Act;
- (n) "relevant local authority law" means-

Bom. LIX of 1949.

 in relation to a City, the Bombay Provincial Municipal Corporations Act, 1949; Guj. 34 of 1964.

(ii) in relation to a municipal borough, transitional area, smaller urban area and notified area, the Gujarat Municipalities Act, 1963:

Guj. 18 of 1993.

(iii) in relation to a taluka and district, the Gujarat Panchayats

Act, 1993;

2 of 1924.

- (iv) in relation to a cantonment, the Cantonments Act, 1924;
- (o) "rules" means rules made under this Act;
- (p) "Selection Committee" means the Selection Committee constituted under section 6;
- (q) "undertaking" means an unit engaged in generation, transmission, distribution or supply of electricity or in any other activity connected with the operation of power system in the State;
- (r) words and expressions used but not defined in this Act and defined in the Central Act shall have the meanings respectively assigned to them in that Act;

9 of 1910. 54 of 1948. (s) words and expressions used but not defined either in this Act or in the Central Act and defined in the Indian Electricity Act, 1910, or in the Electricity (Supply) Act, 1948 shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

ESTABLISHMENT AND CONSTITUTION OF COMMISSION

Establishment and incorporation of Commission.

- 3. (1) For the purpose of regulating Electricity Industry in the State, the State Government shall, by notification in the *Official Gazette*, establish a Commission by the name of the Gujarat Electricity Regulatory Commission.
- (2) The Commission shall be a body corporate, with perpetual succession and common seal and may sue or be sued in its corporate name and shall, subject to the provisions of this Act, be competent to acquire, hold or dispose of property both movable and immovable, and to contract and do all things necessary for the purposes of this Act.
- (3) (a) Notwithstanding that by virtue of section 70, the provisions of the Central Act in so far as they relate to State Commission have ceased to apply, the Gujarat Electricity Regulatory Commission

established under sub-section (1) of section 17 of the Central Act and functioning immediately before the date of commencement of this Act (hereinafter in this section referred to as "the said Commission") shall be deemed to be first Commission established under sub-section (1);

- (b) The Chairperson and members of the said Commission holding office immediately before the said date, shall respectively be the Chairperson and members of the first Commission;
- (c) the Chairperson and the members of the first commission shall hold office for the period for which they would have held office under the Central Act subject, however, to the provisions relating to disqualifications, resignation, removal and vacancy in this Act.

Headquarters of Commission.

4. The headquarters of the Commission shall be at Ahmedabad or at such other place as the State Government may, by a notification in the Official Gazette, specify.

Constitution of Commission.

- 5. (1) The Commission shall consist of a Chairperson and two other members to be appointed by the State Government on the recommendation of a Selection Committee constituted under section 6:
- (2) Out of three members,
- (a) one shall be a person who has special knowledge and professional experience in the field of engineering related to generation, transmission, distribution or supply of electricity;
- (b) the other two shall be the persons who have special knowledge and professional experience in the field of finance, commerce, economics, regulation of industry, law or management:

Provided that not more than one member shall be appointed having professional knowledge and experience in the same field.

- (3) A member of the Commission shall render whole time service and shall not hold any other office during his tenure of office.
- (4) On occurrence of any vacancy in the office of a member due to death, resignation or any other reason, the same shall be filled in by the State Government in the manner provided in this Act.

6. (1) The State Government shall for the purpose of selecting persons for being appointed as members of the Commission, constitute at such times as specified in sub-section (3), a Selection Committee consisting of the following three members, namely:

Constitution of Selection Committee and its functions.

- (a) a Judge of the High Court designated by the Chief Justice to be the Chairperson ex-officio.
- (b) the Chief Secretary to the Government of Gujarat ex-officio;
- (c) the Chairman of the Authority or a member thereof nominated by the chairman ex-officio.
- (2) The Secretary to the Government of Gujarat in Energy and Petrochemicals Department shall be the Secretary ex-officio.
- (3) The State Government shall, within one month from the date of occurrence of any vacancy in the office of a chairperson or member by reason of his death, resignation or removal or within six months before the superannuation of or the end of tenure of the chairperson or a member constitute the Selection Committee and make a reference to it for recommending persons for being selected for appointment in the vacancy.
- (4) The Selection Committee shall, after satisfying itself that the persons who are being recommended by it possess the qualifications mentioned in sub-section (2) of section 5 and are not disqualified under section 9, recommend within two months from the date on which the reference is received by it a panel of names of two persons for each vacancy in the office of a Chairman or, as the case may be, a member.
- (5) The Selection Committee may for the purpose of recommending persons under sub-section (4) follow such procedure as deemed fit including the appointment of a search committee consisting of such persons as the Selection Committee considers appropriate to suggest the panel of persons possessing the requisite qualification and experience and suitable for being considered for appointment as chairperson or member of the Commission.
- (6) The State Government shall within fifteen days from the date of the recommendation by the Selection Committee under sub-section (4) appoint one of the two persons recommended by the Selection Committee for the vacancy.

Term of office and conditions of members.

7. (1) A member shall hold office for a period of five years from the date on which he enters upon his office:

Provided that he shall cease to be a member on the day on which he attains the age of sixty-five years.

- (2) No person shall be appointed as a member after he has attained the age of sixty-two years.
- (3) A member shall not be eligible for re-appointment after the expiry of the term of his office.
- (4) The salary and allowances payable to and other conditions of service of the members shall be such as may prescribed.

Provided that the salary and allowances and other conditions of service of a member shall not be varied to his disadvantage during the tenure of his office.

Oath of office and secrecy.

8. The Chairperson and every member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form and in such manner and before such authority as may be prescribed.

Disqualifications.

- 9. A person shall be disqualified for being appointed or being a member of the Commission, if-
 - (a) he is a member of the Parliament or of any State Legislature or any local authority; or
 - (b) he is a member of a political party;
 - he is, or at any time, has been adjudged an insolvent or he has suspended payment of his debts or has compounded with his creditors;
 - (d) he is of unsound mind and stands so declared by a competent court;
 - (e) he is, or has been convicted of any offence which in the opinion of the State Government, involves moral turpitude;

- he has either directly or indirectly any financial or other (f) interest which is likely to affect prejudicially his functioning as a member:
- he has either directly or indirectly any financial or other (g) interest in
 - generation, transmission, distribution or supply of electricity,
 - manufacture, sale or supply of any fuel for generation (ii) of electricity,
 - manufacture of, or any dealings in, plant and (iii) machinery, equipment's, apparatus or fittings for the matters specified in sub-clause (i), or
 - any body which provides professional services in (iv) relation to matters specified in the aforesaid subclauses
- (1) Notwithstanding anything contained in sub-section (1) of section 7, the State Government may, at any time, remove any member from office, if, in its opinion, such a member -

Removal and resignation of member.

- is or has become, subject to any of the disqualifications mentioned in section 9,
- has been guilty of misconduct in discharge of his duties, (b)
- has become physically or mentally incapable of discharging (c) his duties as a member,
- has so abused his position as to render his continuance in (d) office prejudicial to public interest, or
- has without reasonable cause refused or failed to perform his (e) duties for a period of not less than three months:

Provided that no member shall be removed from his office-

on the ground specified in clause (f) or (g) of section 9 or (i) clause (b), (c), (d) or (e) of this sub-section, unless the High Court on a reference made to it in this behalf by the State

Government, has on an inquiry, reported that the member is liable to be removed on such ground;

- (ii) on any ground specified in clauses (a) to (e) of section 9, unless an opportunity of being heard is given to the member.
- (2) Pending an inquiry against Chairperson or a member under sub-section (1), the State Government may on the recommendation of the High Court suspend the chairperson or the member from his office.
- (3) Any member may resign from his office by giving notice in writing, for such period as may be prescribed, to the State Government, and on such resignation being accepted by the State Government, he shall be deemed to have vacated his office.

Prohibition of appearance before Commission, etc. on ceasing to be a preember.

- 11. A person who ceases to be a member shall not -
 - (a) be entitled to appear in any proceedings before the Commission as a representative of any person for a period of three years from the date of such cesser;
 - (b) acquire either directly or indirectly any financial or other interest of the nature specified in clause (g) of section 9 for a period of two years from the date of such cesser;
 - directly or indirectly in the service of the State Government or any company, body corporate, institution or undertaking, owned or controlled by the State Government or any electricity industry in the State, or in any subsidiary or associated company or firm of such electricity industry for a period of two years from the date of such cesser

Proceedings of Commission.

- 12. (1) The Commission shall meet on such day and at such time and place as the Chairperson or, in his absence, a senior member fixes and shall, subject to sub-sections (2); (3) and (4), observe such rules of procedure with regard to transaction of its business at its meetings as may be provided by regulations.
- (2) Every meeting shall be presided over by the Chairperson, if he is present at the time appointed for holding the same, and, if the office of the Chairperson is vacant or if the Chairperson is, for any reason, absent, by a member who is senior.

- (3) (a) No business shall be transacted at a meeting of the Commission unless at least two members are present from the beginning to the end of such meeting;
 - (b) All questions at a meeting of the Commission shall be decided by a majority of votes.
- (4) If, by reason of disability of a Chairperson or a member or of a vacancy in the office of the Chairperson or a member, there are two members present at the meeting, then in the event of equality of votes, the presiding authority shall have and exercise a second or casting vote.
- (5) Notwithstanding anything contained herein, the Commission may decide urgent matters by the procedure of circulation subject to the following conditions:
 - (a) Where a matter is required to be decided by the Commission urgently, the Chairperson may, instead of bringing the matter for discussion at a meeting of the Commission, direct that it may be circulated to the members for opinion and if all the members are unanimous and the Chairperson thinks that a discussion at a meeting of the Commission is not necessary, the matter shall be decided without such discussion.
 - (b) If the members are not unanimous or if the Chairperson thinks that a discussion at a meeting is necessary, the matter shall be discussed at a meeting of the Commission.
- 13. (1) The Commission in order to enable it to perform its functions, may,-

Officers and employees of Commission.

- (a) with the approval of the State Government, determine the number and category of officers and employees, and
- (b) appoint Secretary, officers and other employees having regard to the number and category of officers and employees determined under clause (a).
- (2) The manner of recruitment of, the salary and allowances payable to, and other conditions of service of the Secretary, officers and other employees, shall be such as may be determined by the Commission by regulations.

Consultants.

14. The Commission may, for the purpose of enabling it to perform its functions, appoint consultants on such terms and conditions as may be determined by the regulations.

Funding of expenses of the Commission.

- 15. (1) The expenditure of the Commission shall be charged upon the Consolidated Fund of the State.
- (2) The Commission may also levy on licensees and other persons seeking any approval, consent, order or directions from the Commission or making any other application to the Commission such fees and charges as the Commission may specify in the regulations and utilise the amounts collected thereof towards meeting the expenses of the Commission.

Provided that:

- (a) the extent of such fees and charges to be levied by the Commission shall be consistent with the budget submitted by the Commission under section 46; and
- (b) to the extent of the amount available to the Commission from such fees and charges there shall be no charge on the Consolidated Fund of the State.

Acts and proceedings presumed to be valid.

- 16. (1) No act or proceeding of the Commission shall be questioned or be invalid on the ground merely of the existence of any vacancy in, or any defect in, the constitution of the Commission.
- (2) No act done by any person acting in good faith as a member shall be deemed to be invalid merely on the ground that he was disqualified to be a member or that there was any other defect in his appointment

CHAPTER III

FUNCTIONS AND POWERS OF COMMISSION

Functions of Commission.

- 17. Subject to the provisions of this Act, the Commission shall perform the following functions, namely:-
- (a) to regulate purchase, transmission, distribution, supply and utilisation of electricity, the quality of service and the tariff and charges payable for the transmission, distribution or supply of electricity having regard to the interest of both the consumers and other persons availing the services and the utilities;

- (b) to regulate the procedure-
 - (i) for purchase and procurement of electricity from any source for transmission, sale, distribution and supply thereof in the State; and
 - (ii) for the determination of the price for such purchase or procurement;
- (c) to promote efficiency, economy and safety in the use of the electricity in the State;
- (d) to determine the tariff for electricity; wholesale, bulk, grid or retail in accordance with the provisions of this Act;
- (e) to determine the tariff payable for the use of the intra-State transmission facilities in accordance with the provisions of this Act;
- (f) to issue licences in accordance with the provisions of this Act and determine the conditions to be included in the licences;
- (g) to levy fees, charges and fines in accordance with the provisions of this Act and retain the same for its expenses;
- (h) to regulate the working of the licensess and to enable that the working of licensees is efficient, economical and equitable;
- (i) to require licensees to formulate prospective plans and schemes in co-ordination with the other persons for the promotion of generation, transmission, distribution, supply and use of electricity;
- to require the licensees to collect data and forecast the demand for use of electricity;
- (k) to set and enforce standards for the electricity industry in the State including standards relating to safety, quality, continuity and reliability of service;
- (1) to promote competitiveness in the electricity industry in the State;
- (m) to formulate standards, codes and practices for operation of the State Grid and the power system;
- (n) to promote efficient utilisation and conservation of electricity, reduction of wastes and losses in the use of electricity;

- (o) to give such advice to the State Government, as the Commission deems appropriate, on matters concerning generation, transmission, distribution, supply and utilisation of electricity in the State;
- (p) to refer, if the Commission deems appropriate, matters to other agencies and bodies dealing with consumer disputes, restrictive and unfair trade practices and management and administration of the affairs of the licensees;
- (q) to adjudicate upon the disputes and differences between the licensees and to refer matters for arbitration, if considered necessary in accordance with the provisions of this Act; and
- (r) to undertake all incidental or ancillary functions that the Commission may consider appropriate.

Powers of Commission.

- 18. (1) The Commission shall, for the purposes of any inquiry under this Act have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-
 - (a) summoning and enforcing the attendance of any witness and examining him on oath;
 - (b) requiring the discovery and production of any document or other material object producible as evidence;
 - (c) receiving of evidence on affidavits;
 - (d) requisitioning of any public record or a copy thereof from any court or office;
 - (e) issuing commissions for examination of witnesses or documents;
 - (f) review of its decisions, directions and orders; and
 - (g) any other matter which may be specified by the Commission by regulations.
 - (2) The Commission shall have the power to pass such interim order in any matter before it, as it may consider appropriate.
 - (3) Where the Commission is of the opinion that it is necessary so to do for the purposes of this Act, it may require by an order in writing to any person-

- (a) to produce before, or to allow examination by, an officer specified in the said order such books, accounts, or other documents in the custody or control of that person, relating to any matter concerning the transmission, distribution, supply or use of electricity, as may be specified in the order, and
- (b) to furnish to the officer specified in the order such information in his possession, power or control as may be specified in the order.
- (4) Where during any inquiry or proceedings under this Act, the Commission has reason to believe that any books or accounts or documents of or relating to any person engaged in transmission, distribution and supply or use of electricity in relation to whom such inquiry is made or proceedings are undertaken are being or may be destroyed, mutilated, altered, falsified or secreted, the Commission may by written order authorise any officer of the Commission to enter and search any place of business of the person or any other place where the Commission has reason to believe that the person keeps or is for the time being keeping the books, or accounts or documents and to seize the same and after granting a receipt therefore retain the same for so long as is necessary in connection with such inquiry.

2 of 1974.

- (5) The provisions of the Code of Criminal Procedure, 1973 relating to searches shall apply so far as may be, to the search made under sub-section (4).
- (6) The Commission may, by a general or special order call upon any person to furnish to the Commission periodically or, as and when required, any information concerning his activities related to generation, transmission, distribution and supply or use of electricity.

Notwithstanding anything contained in sections 12 to 16 (both

9 of 1910.

inclusive) and sections 18 and 19 of the Indian Electricity Act, 1910, the Commission may for the purpose of placing of the electric supply lines, appliances and apparatus for transmission, distribution and supply of electricity, by order in writing, confer upon a licensee or any other person engaged in transmission, distribution or supply of electricity any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885 with respect to placing of telegraph lines and posts subject to such conditions as the Commission may specify in such order.

13 of 1885.

CHAPTER IV

LICENSING OF TRANSMISSION AND SUPPLY OF ELECTRICITY

Prohibition against business of transmission, distribution or supply of electricity.

- 19. (1) No person shall carry on business of transmitting, distributing or supplying (whether in bulk or not) electricity in the State except-
 - (a) the Board constituted under section 5 of the Electricity 54 of 1948. (Supply) Act, 1948,
 - (b) a Government company or a body corporate owned or controlled by the State Government to which undertakings vested in the State alongwith functions, duties, powers and obligations, are transferred under sub-section (3) of section 28 by schemes published in the Official Gazette thereunder.
 - (c) under a licence granted under section 20 or exemption granted by the Commission under section 26 or under a sanction granted by the State Government under section 27,
 - (d) under a licence granted by the State Government under section 3 of the Indian Electricity Act, 1910 before the commencement of this Act or under sanction given by the Government under section 28 of that Act before such commencement so long as such licence or sanction is subsisting:

9 of 1910.

Provided that the Board referred to in clause (a) and the Government company or body corporate owned or controlled by the State Government referred to in clause (b) shall carry on business of transmitting or supplying (whether in bulk or not) electricity subject to such terms and conditions as the Commission may, by notification in the Official Gazette, specify:

Provided further that the persons to whom a licence or sanction referred to in clause (d) has been granted or given shall -

(i) be deemed to be licensees or exemption holders under this Act on the terms and conditions on which the licence or sanction had been granted;

- the provisions of this Act applicable to a licensee shall mutatis mutandis apply to such deemed licensees or exemption holders; and
- (iii) the licence, or sanction granted to the deemed licensees or exemption holders shall be subject to such modification as the Commission may make consistent with the objective and purpose of the Act.
- (2) Where any difference or dispute arises as to whether any person is or is not engaged or about to engage in the business of transmitting or supplying or distributing electricity, the matter shall be referred to the Commission and the decision of the Commission thereon shall be final.
- (3) No licensee shall, on or after the date of the commencement of this Act, supply electricity to any consumer unless a meter is installed for ascertaining the quantity of electricity supplied to the consumer:

Provided that a licensee who on the date of the commencement of this Act supplies electricity without installation of a meter to an occupant of land assessed or held for the purpose of agriculture in the specified area of supply of the licensee may continue to supply till 30th June, 2006 electricity to such occupant without installation of a meter:

Provided further that the licensee shall before the said date install meters for ascertaining the quantity of electricity supplied to such occupants in a specified area of supply of the licensee in accordance with a scheme for progressive installation of meters formulated by the Commission.

- (4) No licence to distribute or supply electricity in a specified area of distribution or supply shall be granted to a generating company-
 - (a) if grant of such licence is likely to adversely affect the operation of the power system or organised development of electricity industry or is not in public interest or in the /interest of the consumers in the specified area of distribution or supply or
 - (b) unless the generating company undertakes to charge such tariff to the consumers in a specified area of distribution or supply of an existing licensee as is equal to or less than the tariff charged by such licensee in such area.
- 20. (1) The Commission may, on an application made to it in such form and on payment of such fee as may be specified by regulations, grant a licence to any person-

Grant of licence.

- (a) to transmit electricity in a specified area of transmission; or
- (b) to distribute electricity in a specified area of distribution; or
- (c) to supply electricity in a specified area of supply; or
- (d) to supply electricity in bulk to any other licensee; or
- (e) to engage in one or more of the activities mentioned in clauses (a) to (d):

Provided that no application for a licence to transmit electricity shall be entertained unless the applicant has obtained the approval of the State Transmission Utility in such manner as maybe specified by regulations.

Explanation.- For the purpose of this Chapter and Chapter VI, the expression 'specified area' means the area specified in the licence.

- (2) (a) (i) A person who applies for a licence under sub-section (1) shall publish a notice of his application for the information of the public specifying therein that if there is any objection to the application, the same may be sent to the Commission for its consideration;
 - (ii) The notice of his application shall be published within such time, in such manner and containing such particulars as the Commission may specify by regulations.
 - (b) The Commission shall not grant a licence until,-
 - (i) all objections and suggestions received by the Commission with reference to the application have been considered by the Commission:

Provided that no objection or suggestion shall be considered unless it is received before the expiration of such period not being less than a month from the date of the first publication of the notice under clause (a), as the Commission may by regulations specify; and

(ii) in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Central Government for defence purposes, the Commission

has ascertained that there is no objection from the Central Government to the grant of the licence.

- (c) Where an objection is received from any local authority concerned, the Commission shall, if in its opinion, the objection is untenable, record the opinion in writing and communicate it to such local authority alongwith reasons therefor.
- (3) (a) There shall be specified in a licence -
 - (i) the specified area of transmission, or
 - (ii) the specified area of distribution, or
 - (iii) the specified area of supply, or
 - (iv) other licensee or person to whom electricity may be supplied in bulk, and
 - (v) such terms and conditions including those relating to transmission or distribution or supply as may be specified by regulations.
 - (b) The Commission may specify by regulations the conditions to be included in a licence requiring a licensee to-
 - (i) enter into an agreement with another person permitting such person to use electric lines, electrical plant and associated equipment operated by the licensee;
 - (ii) furnish information and documents which the Commission may require for its purpose;
 - (iii) inform the Commission of any scheme permitted by the licence which the licensee proposes to undertake;
 - (iv) undertake such functions and obligations of the Board under the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 as the Commission may specify by regulations;

- 9 of 1910.

54 of 1948.

- (v) refer a dispute arising under the licence for determination by the Commission or by an arbitrator appointed by the Commission;
- (vi) supply electricity in bulk to other licensees or exemption holder or sanction holder in the State or to any person outside the State;
- (vii) comply with any direction given by the Commission;
- (viii) act in accordance with the terms and conditions of the licence.
- (4) A licence granted for transmission of electricity may authorise the licensee to construct, maintain or operate any intra-State Transmission System under the direction, control and supervision of the State Transmission Utility.
- (5) The provisions contained in the Schedule to the Indian Electricity Act, 1910 shall be deemed to be incorporated with, and to form part of, every licence granted under this Chapter save in so far as they are expressly added to, varied or excluded by the licence and shall, subject to any such additions, variations or exceptions which the Commission may make, apply to the undertaking authorised by the licence in relation to its activities in the State:

Provided that where a licence is granted by the Commission for the bulk supply of electricity to other licensees for distribution or supply by them, then in so far as such licence relates to such bulk supply, the provisions of clauses IV, V, VI, VII, VIII and XII of the said Schedule shall not be deemed to be incorporated in the licence.

(6) The grant of a licence to a person shall not in any way hinder or restrict the power of the Commission to grant a licence to another person within the same specified area for a like purpose.

Powers of licensees.

21. (1) Subject to the provisions of this Act, the provisions of sections 12 to 26 of the Indian Electricity Act, 1910 shall have effect as if reference to a licensee in those provisions is a reference to a licensee under this Act.

9 of 1910.

- (2) (a) Where-
 - (i) any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to the

9 of 1910.

Bom. V of 1879.

Board, or a licensee (hereinafter in this sub-section referred to as "the licensee") in respect of the supply of electricity to him, and

(ii) the Board or the licensee to whom such charge or other sum is due is a Government Company or a Corporation owned or controlled by the State Government,

such charge or other sum or the aggregate of such charge and other sum due to the Board or the licensee shall be recoverable as arrears of land revenue.

- (b) For the purpose of effecting recovery of the charge or sum or both the charge and sum due from a person under clause (a) as the arrears of land revenue, such officer as may be appointed by the State Government in this behalf by notification in the Official Gazette shall have and exercise all the powers and perform all the duties of the Collector under the Bombay Land Revenue Code, 1879.
- (c) No suit or other legal proceeding shall lie in any Civil Court against the recovery of charge or other sum due as arrears of land revenue unless the person from whom such charge or sum is due deposits the amount of such charge or sum with the Board or the licensee:

Provided that the Court may, in the case of hardship caused to the person from whom such charge or sum is due, in depositing the whole amount, dispense with deposit of the amount to the extent of not more than twenty-five percent of the amount due.

22. (1) Where in its opinion the public interest so requires, the Commission may, on the application of the licensee and if the licensee is not a local authority, on the application of the local authority concerned or otherwise, may make such amendments in the terms and conditions of a licence as it thinks fit having regard to the object and purposes of this Act:

Amendment of licence.

Provided that no such amendment, other than an amendment by virtue of a term or condition of a licence or of a term or condition imposed under sub-section (5) of section 23, shall be made except with the consent of the licensee.

(2) Where the licensee has made an application under sub-section (1) proposing an amendment in his licence, the following provisions shall apply, namely:-

- (a) The licensee shall invite objections from interested persons by publishing a notice of the application in such manner and with such particulars as the Commission may specify by regulations.
- (b) The Commission shall not make any amendment until all objections received by it with reference to the application within one month from the date of the first publication of the notice have been considered.
- (c) In the case of an application proposing an amendment in an area of supply or distribution comprising the whole or any part of the cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Central Government for defence purposes, the Commission shall not make the amendment except with the consent of the Central Government.
- (3) Before making any amendment in a licence otherwise than on the application of the licensee, the Commission shall publish the proposed amendment in such manner and with such particulars as the Commission may specify by regulations and consider all objections received by it with reference to the proposed amendment within one month from the date of the publication of the notice.

Revocation of licence.

- 23. (1) The Commission may inquire into the functioning of any licensee in carrying out the obligations under this Act or regulations made thereunder or the terms and conditions of the licence,
- (a) upon receiving a complaint relating to the functioning of the licensee from a consumer or association of consumers; or
- (b) upon a reference made to it by the State Government, Central Government, the Central Commission, Central Electricity Authority or any other Authority; or
- (c) on its own motion.
- (2) If upon making such inquiry, the Commission is of the opinion, that the public interest so requires, it may revoke a licence in any of the following cases, namely:-
 - (a) where the licensee, in the opinion of the Commission, has committed a willful or unreasonably prolonged default in doing anything required by or under this Act or regulations;

- (b) where the licensee commits a breach of any of the terms and conditions of the licence, the breach of which is expressly declared by such licence to render it liable to revocation;
- where the licensee fails within the period specified in the licence or any longer period that the Commission may, by order, allow
 - to show, to the satisfaction of the Commission, that he is in a position to discharge the duties and obligations imposed on him by the licence; and
 - (ii) to make the deposit or furnish the security required by the licence;
- (d) where in the opinion of the Commission the financial position of the licensee is such that the licensee is unable to discharge the duties and obligations imposed on him; and
- where the licensee, in the opinion of the Commission has made default in complying with a direction given by the Commission.
- (3) Where in its opinion the public interest so requires, the Commission may, on the application or with the consent of the licensee, and if the licensee is not a local authority, after consulting the local authority concerned, revoke a licensee as to the whole or any part of the area of transmission, distribution or supply upon such terms and conditions as it thinks fit.
- (4) No licence shall be revoked under sub-section (2) unless the Commission has given to the licensee not less than thirty days' notice in writing, stating the grounds on which it is proposed to revoke the licence and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.
- (5) The Commission may, instead of revoking the licence under sub-section (2), permit it to remain in force subject to such modifications or such further terms and conditions as it thinks fit to impose and the terms and conditions so imposed shall be binding upon, and be complied with by, the licensee, and be of like force and effect as if they were contained in the licence.

Provisions where licence is revoked.

- 24. (1) Where the Commission revokes a licence, under sub-section (2) of section 23 the following provisions shall apply, namely:-
 - (a) The Commission shall serve a notice of revocation upon the licensee and shall fix a date on which the revocation shall take effect and on and with effect from that date or on and with effect from an earlier date, on which the undertaking of the licensee is sold to a purchaser in pursuance of clause (c) or is delivered to a designated purchaser in pursuance of sub-section (3), all the rights, duties, obligations and liabilities of the licensee under this Act shall cease and determine.
 - (b) The Commission shall invite applications for purchase of the undertaking of the licensee whose licence is revoked and determine the price and other terms and conditions of the sale of the undertaking in consultation with the licensee and the person whose application has been accepted.
 - (c) The Commission may by notice in writing require the licensee to sell, and thereupon the licensee shall sell the undertaking to the person whose application has been accepted by the Commission (hereinafter in this section referred to as "the purchaser").
 - (2) Where an undertaking is sold under sub-section (1), the purchaser shall pay to the licensee the purchase price of the undertaking determined under clause (b) of sub-section (1).
 - (3) Where the Commission issues any notice under clause (c) of sub-section (1) requiring the licensee to sell the undertaking, it may by such notice require the licensee to deliver, and thereupon the licensee shall deliver on a date specified in the notice, the undertaking to the designated purchaser pending the payment of the purchase price of the undertaking:

Provided that in any such case, the purchaser shall pay to the licensee interest at such per cent not exceeding the Reserve Bank lending rate prevailing at the time of delivery of the undertaking as the Commission may decide, on the purchase price of the undertaking for the period from the date of delivery of the undertaking to the date of payment of the purchase price.

- (4) (a) Where for any reason no sale of the undertaking has been effected under sub-section (1), the Commission may, in consultation with the State Government -
 - (i) by an order published in the Official Gazette, authorise any person or body of persons to take over the management of the undertaking of a licensee for such period not exceeding five years from the date of revocation as may be specified in the order.
 - (ii) endeavour to sell the undertaking during the aforesaid period.
- (b) On the issue of the order authorising the taking over of the management of the undertaking -
 - (i) all persons in-charge of the management immediately before the issue of the order shall be deemed to have vacated their offices; and
 - (ii) the person or body of persons authorised to take over (hereinafter in this section referred to as "the authorised person or body") shall take all such steps as may be necessary to take into his or their custody or control all the property, effects and actionable claims to which the undertaking is or appears to be entitled and all the property and effects of the undertaking shall be deemed to be in the custody of the person or, as the case may be, body of persons as from the date of the order;
 - (iii) where the undertaking of a licensee is a company, the persons authorised to take over the management of the undertaking shall, for all purposes, be the directors of the undertaking duly constituted under the Companies Act, 1956 and shall alone be entitled to exercise the powers of the directors of the undertaking whether such powers are derived from the said Act or the Memorandum or Articles of Association of the undertaking or from any other source;
 - (iv) subject to the control of the Commission, the authorised person or body shall take such steps as may be necessary for the purpose of effectively managing the business of the undertaking and shall exercise such other powers and have such other duties as may be specified by the Commission;

1 of 1956.

- (v) the authorised person or body shall, notwithstanding anything contained in the Memorandum or Articles of Association of the Licensee, exercise his or their functions in accordance with such directions as may be given by the Commission.
- (c) Where the undertaking of the licensee is sold within the period specified in the order issued under sub-clause (i) of clause (a), the order shall be deemed to have been rescinded from the date of sale.
- (d) Where the undertaking of the licensee is not sold within the period specified in clause (a), the undertaking shall vest in the State Government free from all encumbrances.
- (e) Where an undertaking of the licensee vests in the State Government under clause (c), there shall be paid to the licensee such value as may be determined by the State Government.

Restrictions on Licensees.

- 25. (1) No licensee shall, at any time, without the previous consent in writing of the Commission, acquire by purchase or otherwise the licence or the undertaking of, or associate himself so far as the business of transmission, distribution or supply of electricity is concerned with any person transmitting, distributing or supplying under any other licence or intending to transmit, distribute or supply electricity or with any generating company.
- (2) The licensee shall not, at any time, assign his licence or transfer his undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of the Commission.
- (3) A holder of a licence for supply or transmission of electricity may, unless expressly prohibited by the terms of his licence or by a general or special order passed by the Commission, enter into arrangements for the purchase of electricity from -
 - (a) the holder of a licence for supply of electricity which permits the holder to supply electricity to other licensees for distribution or supply by them; and
 - (b) any supplier of electricity in accordance with the regulations of the Commission governing the power purchase and procurement process.
- (4) Any agreement relating to any transaction of the nature described in sub-section (1) or sub-section (2) made without the consent of the

Commission or any arrangement entered into in contravention of sub-section (3), shall be void.

(1) Notwithstanding anything contained in this Act, the Commission Exemption from 26. may by a general or special order grant exemption to any person from the the requirement requirement to have a licence to engage in transmission, distribution or supply of electricity including bulk supply subject to compliance with such conditions as may be specified by the regulations.

to have a licence.

- Commission shall not grant any exemption under (2)sub-section (1):
 - (a) except with the consent of the Central Government, in any case where electricity is to be transmitted, distributed or supplied in any area forming part of any cantonment, aerodrome, fortress, arsenal, or camp or any building or place in the occupation of the Central Government for defence purposes;
 - in any area falling within the area of transmission, (b) distribution or supply, without giving an opportunity of hearing to the licensee of such area.
- An exemption under sub-section (1) may be granted having regard to such guidelines as may be specified in the regulations -
 - to persons of a particular category; or (a)
 - to a particular person; or (b)
 - for a particular period. . (c)

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- An exemption granted under sub-section (1) shall be published in (4) such manner as the Commission considers appropriate.
- The exemption granted under sub-section (1) may be revoked by the (5) Commission at any time for reasons to be recorded in writing.
- An exemption granted under sub-section (1), unless previously (6) revoked, shall continue in force for such period as may be specified in or determined by or under the order granting the exemption.
- Notwithstanding anything contained in this Act, where the State Government is of the opinion that an emergency has arisen wherein it is necessary to transmit, distribute or supply electricity to the public in an area,

Sanction by State Government in case of emergency.

it may, on an application made to it in such form and on payment of such fees as may be prescribed by an order in writing grant sanction to a person to engage temporarily, for a period not exceeding six months, in the business or activity of transmission, distribution or supplying electricity in such area and in accordance with such conditions as may be specified in the order.

CHAPTER V

REORGANISATION OF GOVERNMENT ELECTRICITY INDUSTRY

Reorganisation of Government Electricity Industry.

- 28. (1) The State Government may from time to time by notification in the Official Gazette publish schemes to reorganise the Government Electricity Industry and to effect the transfer of such of the functions, duties, powers and obligations and such of undertaking of the Government Electricity Industry or such portion thereof consisting of assets, properties, interest in properties, proceedings and liabilities in the manner and on the terms and conditions the State Government may provide in the transfer scheme.
- (2) On and from the date the transfer scheme under sub-section (1) is notified in Official Gazette or on and with effect from such further date as may be specified in such transfer scheme, (hereinafter referred to as the effective date), the State Government may provide that such of the undertakings of the Government Electricity Industry or portion thereof consisting of assets, properties, interest in properties, proceedings, liabilities, rights and obligations which immediately before the effective date belong to the Government Electricity Industry shall stand transferred to and vest in the State Government on the terms and conditions specified in the transfer scheme without any further act, deed or thing to be done by the Government Electricity Industry or any other person.
- (3) The State Government may from time to time by notification in the Official Gazette publish schemes to effect transfer of the undertakings which vest in the State under sub-section (2) to such Government companies or bodies corporate owned or controlled by State Government (hereinafter called "the First Transferee") on such terms and conditions and with such functions duties, powers and obligations as the State Government may provide in the transfer scheme and such transfer and vesting in the First Transferee shall take effect from the date specified in the transfer scheme without any further act, deed or thing to be done by any person.

(4) The State Government may, after consulting the First Transferee to whom the functions, duties, rights, powers, obligations and undertakings, as the case may be, have been transferred and vested in terms of the foregoing provisions by notification in the Official Gazette publish schemes to transfer and vest in any other company or body corporate or person or authority (hereinafter called "the Second Transferee") such part of the undertakings from the First transferee to the Second Transferee on such terms and conditions and with such functions, duties, powers and obligations as the State Government may specify and such transfer shall take effect from the date specified in the transfer scheme without any further act, deed or thing to be done by any person.

9 of 1910. 54 of 1948.

- (5) The State Government may by notification provide that such of the functions, duties, powers and obligations exercisable by the Board under the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948 or any rules framed there under shall be exercisable by the First Transferee or the Second Transferee or by other companies or bodies corporate or person or authority, as the State Government may specify.
- (6) Notwithstanding anything contained in this section, where a transaction of any description is effected in pursuance of the transfer scheme under this part, it shall be binding on all persons including third parties.
- (7) A transfer scheme may:-
 - (a) define the property, interest in property, rights and liabilities to be transferred:-
 - (i) by specifying or describing the property, rights and liabilities in question;
 - (ii) by referring to all the property, interest in property, rights and liabilities comprised in a specified part of the undertaking; or
 - (iii) partly in the one way and partly in the other;
 - (b) provide that any rights or liabilities specified or described in the scheme shall be enforceable by or against the first Transferee or the Second Transferee;
 - (c) provide 'for restructuring or re-organisation of the undertakings including forming of subsidiaries, joint ventures, mergers and demergers;

- (d) impose on any licensee an obligation to enter into such written agreements with, or execute such other instruments in favour of, any other subsequent licensee as may be specified in the scheme; and
- make such supplement, incidental and consequential provisions as it is considered appropriate including provision specifying the order in which any transfer or transaction will be effective.
- (8) All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Government Electricity Industry, or the First Transferee before the relevant transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by the First or the Second Transferee, as the case may be.
- (9) All suits and other legal proceedings instituted or that may be instituted or pending involving the Government Electricity Industry or the First Transferee, as the case may be, before the relevant transfer scheme becomes effective shall in the manner specified in the relevant transfer scheme be continued or instituted by or against the First or the Second Transferee.
- (10) If pursuant to a transfer scheme framed by the State Government a licensee is required to vest any part of its undertaking in another company or body corporate or person or authority, the Commission shall amend the licence granted and issue requisite licence to enable such other company or body corporate or person or authority to discharge the functions.
- (11) The Government Electricity Industry shall cease to be charged with, and shall not perform, the functions, rights, powers and duties to the extent the same are transferred and vested in any other company or body corporate or person or authority in accordance with the provisions of this Act.
- (12) The exercise by a licensee of any of the rights and powers of the Government Electricity Industry may be made on such conditions as shall be specified in the transfer scheme including a condition that they shall be exercised by the licensee only with the approval of the Commission.

Explanation.- For the purposes of this section and section 29, the expression "Government Electricity Industry" means the Board and any other Electricity Industry owned or controlled by the State Government.

29. (1) The State Government may provide for transfer of such of the personnel of the Board to the First Transferee or from the First Transferee to the Second Transferee, as the case may be, as a part of the undertaking transferred under section 28 and on such terms and conditions as the State Government may prescribe and such transfers shall be effective in the like manner as in the case of transfers under section 28.

relating to transfer of personnel.

- Upon such transfers the personnel, shall hold office or service under the First Transferee or the Second Transferee, as the case may be, on terms and conditions that may be determined in the transfer scheme subject to the following, namely:-
 - (a) that the terms and conditions of the service in regard to emoluments and other monetary benefits applicable to them in the First Transferee or the Second Transferee shall no in any way be less favourable than those applicable to them immediately before the transfer;
 - (b) that the personnel shall have continuity of service in the First Transferee and the Second Transferee; and
 - (c) that all benefits of service accrued before the transfer shall be recognized and appropriately provided for to secure the interest of the Personnel.

Notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law as is applicable and except for the provisions made in this Act, the transfer of the employment of the personnel in terms of the provisions of this part shall not entitle such employees to any compensation or damage under this Act, or any other Central or State law or under the general law, save as provided in the Transfer Scheme.

Explanation. – For the purposes of this Chapter and the Transfer Scheme the term "Personnel" shall mean and include all persons who on the effective date are the employees of the Government Electricity Industry, by whatever name called.

The State Government may provide that the transfers in Variation of terms of sections 28 and 29 shall be provisional for a period of twelve months from the effective date of transfer and reserve the right to alter, vary, modify, add or otherwise change the terms in such manner as the State Government may consider appropriate.

14 of 1947.

Furnishing of information regarding establishment of generating stations.

- 31. (1) Notwithstanding anything contained in any law for the time being in force, any person who establishes a generating station or acquires a generating station, or extends or replaces major unit of plant or works pertaining to generation of electricity in a generating station, shall furnish information relating to such establishment, acquisition, extension or replacement in such form and manner as may be prescribed, to the State Government and the Commission within seven days of such establishment, acquisition, extension or replacement.
- (2) A generating company shall make available to the State Government, the Commission and the Licensees such information as may be prescribed by the State Government or as may be directed by the Commission relating to the generation plan, shut down proposed for planned maintenance, break down of the plant and other factors affecting the generation and supply of electricity for the purposes of facilitating the effective planning the power purchase and procurement process in the State.

CHAPTER VI

TARIFFS

Tariffs.

- 32. (1) Notwithstanding anything contained in any other law or in any existing contract or agreement or arrangement the tariff for intra-State Transmission of electricity and the tariff for distribution and supply of electricity (wholesale, bulk or retail, as the case may be,) in the State (hereinafter called the "tariff"), shall be determined by the Commission in accordance with the provisions of this Act.
- (2) The Commission may determine by regulations, the terms and conditions for the fixation of tariff, and in doing so, shall be guided by the following factors, namely:-
 - (a) that the tariff progressively reflect the cost of supply of electricity at an adequate and improving level of efficiency;
 - (b) the factors which would encourage efficiency, economical use of the resources, good performance, optimum investments and other matters which the Commission considers appropriate for the purpose of this Act;
 - (c) the electricity generation, transmission, distribution and supply are conducted on commercial principles;

- (d) the interests of the consumers are safeguarded and at the same time, the consumers pay for the use of electricity in a reasonable manner;
- (e) the principles and their applications provided in sections 46 and 57 of the Electricity (Supply) Act, 1948 and the Sixth Schedule thereto; and

54 of 1948.

(f) in the case of the Board the principles under section 59 of the Electricity (Supply) Act, 1948 are observed:

54 of 1948.

Provided that where the Commission, departs from factors specified in clause (e) it shall record reasons therefore in writing.

- (3) The Licensee shall observe the methodologies and procedures specified by the Commission from time to time in calculating the expected revenue from charges which the Licensee is permitted to recover and in determining tariffs to collect those revenues.
- (4) If the State Government requires the grant of any subsidy to any category of consumer or class of consumers in the tariffs which is determined by the Commission under this section, the State Government shall pay the amount to compensate the person affected by the grant of subsidy in the manner which the Commission may direct, as a condition for the licensee or any other person concerned to implement the subsidy provided for by the State Government.
- (5) Any retail tariff is determined or implemented under this Act shall not show undue preference to any consumer of electricity, but may differentiate according to the consumer's load factor, power factor, and total consumption of electricity during any specified period or the time at which supply is required or the geographical position of any area, or the nature of supply and the purpose for which the supply is required and further within a class of consumer the paying capacity of category of customers and need for cross subsidization by others in that class;
 - (a) shall, be in a manner that the existing subsidy given to any class or classes of consumer by charging higher tariff from other classes of consumer is progressively reduced to the extent that within a period of five years from the commencement of this Act the tariff to every class of consumer shall reflect a minimum of sixty seven per cent of the licensee's average cost of supply of electricity to that class;

- (b) shall be just and reasonable and be such as to promote efficiency in the supply and consumption of electricity; and
- (c) shall satisfy all other relevant provisions of the Act, regulations and conditions of licence.
- (6) Every licensee shall provide to the Commission, at such time and in such manner, as may be specified by the regulations, full details of its calculations for the ensuing financial year of the expected aggregate revenue from charges, which it believes to have been permitted to recover under the tariff and such further information, as the Commission may require to assess such calculations.
- (7) The Commission may after a public hearing of the licensee and other interested parties determine the tariff to be charged by the licensee at the time of initial grant of licence and thereafter at such intervals not exceeding five years and in such manner as the Commission may specify.
- (8) The Commission shall be entitled to include in the tariffs of the licensee an amount to be appropriated to Special Funds, which the Commission, in its opinion, consider necessary, to meet the expenses required for implementing projects to enable transmission, distribution or supply of Electricity in different places in the State.
- (9) No tariff or part of any tariff which is determined by the Commission and implemented may be revised at the instance of the licensee more than once in any financial year, except in respect of any changes expressly permitted to be revised including under any fuel surcharge formula as may be specified by the Commission in the order determining the tariff. The licensee shall provide details of the proposed revision in tariff to the Commission, together with such further information as the Commission may require. The Commission shall notify its decision on the proposed revision in tariff within ninety days of receipt of all information and after hearing the interested persons:
- (10) The licensee shall publish in a daily newspaper having circulation in the specified area and such tariff shall take effect only after seven days from the date of such publication.
- (11) Notwithstanding anything contained in sections 46, 57A and 57B of the Electricity (Supply) Act, 1948 no Rating Committee shall be constituted 54 of 1948. after the date of commencement of this Act.

Explanation .- In this section --

- "the expected revenue from charges" means the total revenue which a licensee is expected to recover from charges for the level of forecast supply in any financial year, in respect of goods or services supplied to consumers.
- (b) "Tariff" means a schedule of standard prices for transmission, distribution or supply of electric energy or charges for specified services, which are applicable to all such specified services provided to the type or types of purchaser or person who avails the service or consumer specified in the Tariff.
- 33. The State Government may provide financial assistance to licensees on such terms and conditions as it thinks fit to impose, in the following manner, namely:-

Financial assistance to licensee by State Government.

- (a) Grant of subventions.
- (b) Grant of loans.
- (c) Guarantee of repayment by a licensee of the amount of loan, or interest on loan or both the loan and the interest thereon.

CHAPTER VII

COMMISSION'S POWER TO PASS ORDERS AND ENFORCE DECISIONS

34. (1) Where the Commission is satisfied that a licensee is contravening, or is likely to contravene any of the provisions of this Act or rules or regulations made thereunder or any of the conditions of the licence, it shall either by an interim order under sub-section (4) or by a final order under section 35, issue such directions as it deems proper for preventing such contravention.

Orders for preventing contraventions bulicensees.

- (2) In determining whether it is appropriate that an interim order be made, the Commission shall have regard, in particular to-
 - (a) the extent to which the contravention or likely contravention by the licensee may affect the purposes of this Act;

- (b) the extent to which any person is likely to sustain loss or damage in consequence of such contravention before a final order is made; and
- (c) whether there is any remedy available to prevent such contravention.
- (3) If the Commission proposes to make an interim order, it shall give notice of the proposed interim order to the licensee setting out therein the following, namely:-
 - (i) the contravention that the proposed order is intended to prevent;
 - (ii) the acts or omissions which, in its opinion constitute such contravention:
 - (iii) the facts which in its opinion, justify the making of the proposed order;
 - (iv) the effects of the proposed order; and
 - (v) the period, being not less than fifteen days from the date of notice, within which the licensee may show cause why the proposed order be not made.
- (4) The Commission may after considering the reply of the licensee to the notice, if any, make such interim order as it thinks fit at any time after the expiry of the period specified in the notice, if the Commission has reason to believe that,-
 - (a) the licensee to whom the notice was given has contravened or is contravening or is likely to contravene any of the provisions of this Act or rules or regulations made thereunder or any condition of licence; and
 - (b) the order is necessary for the purpose of preventing such contravention.

(5) An interim order -

(a) may provide for the taking over of the management of the Licensee's Undertakings and functions and authorizing any person or body of person to manage the affairs and exercise in respect of the whole or any part of the undertaking of the

licensee, such functions or control may be specified in the order till further orders of the Commission;

- (b) may require the licensee to do, or abstain from doing, such things as are specified in the order;
- (c) shall take effect from such date, as is specified in the order; and
- (d) shall cease to have effect on such date as is specified in the order unless the order is rescinded earlier:

Provided that where the Commission has commenced the procedure for making the interim order as final order before the cesser of the interim order, the interim order shall not cease to have effect and shall continue to be in force till a final order is made.

- (6) Where the Commission has made an interim order, it shall as soon as possible thereafter,-
 - (a) serve a copy of the order on the licensee and publish the same in such manner as it deems fit, and
 - (b) commence proceedings to declare the interim order to be a final order in accordance with section 35.
- 35. (1) If the Commission proposes to make a final order or to declare an interim order to be a final order, the Commission shall give notice of the proposed final order to the licensee -

Final orders for preventing contraventions.

- (a) stating that it proposes to make the final order or as the case may be, declare the interim order to be a final order;
- (b) setting out the matters referred to in sub-section (3) of section 34 in respect of the proposed final order; and
- (c) specifying the period being not less than thirty days from the date of the notice within which the licensee may show cause why the proposed order may not be made.
- (2) The Commission may, after considering the reply of the licensee to the notice, pass such final order as it thinks fit.

- (3) Where the Commission has made a final order, it shall, as soon as possible thereafter, serve a copy of the order on the licensee and publish the same in such manner as deemed fit.
- (4) The Commission shall, as soon as practicable, after making a final order, require the licensee to do or abstain from doing such things as are specified in the order

Power to modify or revoke final order.

- 36. (1) The Commission may, of its own motion within one year or on an application made to it by a licensee within six months from the date of the final order, modify or revoke the final order.
- (2) The Commission shall, before making an order under sub-section (1), give a notice of not less than thirty days to the licensee to show cause as to why the final order may not be modified or revoked.
- (3) The Commission may, after considering the reply of the licensee to the notice modify or revoke the final order and inform the licensee of its decision.

Enforcement of orders.

37. An order made by the Commission under section 34, 35 or 36 shall be enforced as if it were a decree of a civil court.

Power of Commission to assume management or control of undertaking of a licensee in certain cases.

- 38. (1) If, pending an inquiry and passing of an interim or final order under this chapter, the Commission is of the opinion that the undertaking of the licensee is being managed in a manner detrimental to maintenance of continued transmission, distribution or supply of electricity and for maintaining such continued transmission, distribution or supply of electricity in public interest it is necessary to assume forthwith the management or control of the undertaking of the licensee, the Commission may by order notified in the Official Gazette, authorise any person or body of persons to take over the management of the whole or part of the undertaking of the licensee and exercise in respect of the whole or any part of the undertaking of the licensee, such functions or control as may be specified in the order.
- (2) Any order issued under sub-section (1) shall have effect till the interim or final order is made under section 34 or 35.

Fines and charges.

39. (1) The Commission shall be entitled to impose such fines and charges as may be specified by regulations for non-compliance or violation

on the part of the Generating Companies, licensees or other persons, of the provisions or requirements of this Act or rules and regulations framed thereunder and licence conditions, directions or orders of the Commission made from time to time. The fines which the Commission shall be entitled to impose may extend upto two lakhs rupees for an act of non compliance or violation and a further amount not exceeding ten thousand rupees for every day during which the non compliance or violation continues.

- The Commission shall be entitled to direct compensation to be paid by the person guilty of violation or non-compliance as provided in subsection (1) to the person or persons affected by such violation or non compliance.
- (3) The fines, charges and compensation which may be imposed by the Commission under this section shall be in addition to and not in derogation or any other liability, which the person guilty of violation or non compliance; may have incurred.
- (1) The District Magistrate and the District Superintendent of Police Co-operation of having jurisdiction in the area concerned shall so far as may be, co-operate by themselves or through their subordinates, with the Commission for carrying into effect and enforcing the provisions of this Act.

It shall be the duty of every police officer to communicate without any delay to the Commission any information which he receives of a design to commit or the commission of any offence under this Act, rule or regulation and to assist the Commission or any officer or servant reasonably demanding his aid for the lawful exercise of any power vesting in the Commission or in such officer or servant.

CHAPTER VIII

ADVISORY COMMITTEE, STANDARDS OF PERFORMANCE AND DISCLOSURE OF INFORMATION BY LICENSEES

(1) The Commission shall by notification in the Official Gazette, and Advisory in consultation with the State Government constitute an Advisory Committee.

The Advisory Committee shall consist of not less than five (2)and not more than fifteen members;

- (b) The constitution of the Advisory Committee shall be as follows:-
 - (i) The Chairperson and members of the Commission shall be the Chairperson and members of the Committee, ex-officio.
 - (ii) Other members of the Committee shall be appointed by the Commission from amongst persons who are interested in the electricity industry in the State.
- (3) The Committee shall meet at least once in every three months.
- (4) The term of office of the members of the Committee shall be three years.
- (5) Subject to sub-section (3), the Committee shall meet at such times and places and observe such rules of procedure in regard to transaction of its business at its meetings as may be determined by it.
- (6) The Committee shall advise the Commission-
 - (a) on questions of policy relating to electricity industry, and
 - (b) on any matter including the matter relating to quality, continuity and extent of the service of transmission, distribution or supply of electricity provided by a licensee or compliance of terms and conditions of licence by him which the Commission may refer to it for advice.

Performance of standards of supply of electricity.

- 42. (1) The Commission may, after consultation with the Advisory Committee, the licensees and persons likely to be affected, by an order,-
 - (a) lay down-
 - such standards of overall performance in connection with the transmission, distribution or supply of electricity as, in its opinion is necessary for the licensee to achieve,
 - (ii) such standards in connection with efficient use of electricity by consumers as in its opinion are necessary:

Provided that such standards, shall, so far as may be, consistent with the standards set up for the electricity industry by -

(i) Central Electricity Authority constituted under the Electricity (Supply) Act, 1948.

54 of 1948.

(ii) Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986,

63 of 1986.

(iii) Central Electricity Regulatory Commission established under the Electricity Regulatory Commissions Act, 1998,

14 of 1998.

- (b) specify power system operation standards and codes including grid codes and distribution and supply codes to be complied with by licensees,
- (c) specify safety regulations in the use of electricity and for operation of the power system.
- (2) The Commission may lay down different standards and codes for different licensees.
- (3) The Commission shall publish standards, codes and regulations laid down under sub-section (1) in such form and in such manner as it thinks fit.
- 43. The Commission may, after consultation with the Advisory Committee, licensees supplying electricity and persons likely to be affected, specify by regulations the circumstances in which such licensees shall inform consumers of electricity of their rights in relation to supply of electricity to them and compensation to be paid by such licensees to consumers for any delay or default by such licensees in supplying electricity to the consumers.

Information on standards of performance.

44. (1) The Commission may from time to time collect information with respect to:

Information with respect to level of performances.

- (a) the fines or penalties levied on licensees under this Act;
- (b) the levels of performance achieved by such licensees in connection with the transmission, distribution and supply of electricity; and

- (c) the levels of performance achieved by such licensees in connection with the efficient use of electricity by consumers.
- (2) For the purposes of sub-section (1) each licensee shall, on or before such date in each year as may be specified by the Commission in a direction issued in that behalf, furnish to the Commission the following information with respect to each standard laid down under clause (a) of sub-section (1) of section 42, namely:
 - the number of cases in which penalties are levied and the aggregate value thereof, and
 - (b) such information regarding the level of performance achieved by a licensee as required by the direction.
- (3) The Commission may at least once in every year publish in such form and in such manner as it may deem fit such of the information collected by or furnished to it under this section as deemed fit.

Restriction on disclosure of information.

- 45. (1) Subject to the provisions of this Act, no information relating to business of generation, transmission or distribution and supply of electricity carried on by any person shall be disclosed by the Commission without the consent of the person so long as the business is carried on if such information-
 - (a) is obtained by the Commission by or under this Act, and
 - (b) is confidential in nature.
- (2) The restriction imposed by sub-section (1) shall not apply to the disclosure of such information-
 - (a) in any suit, prosecution or other legal proceeding,
 - (b) for the purposes of the State,
 - (c) before any authority established by law, or
 - (d) in public interest, or
 - (e) in the annual report referred to in section 42.

CHAPTER IX

ACCOUNTS, AUDIT AND REPORTS

The Commission shall prepare, in such form and at such time in 46. each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Commission and forward the same to the State Government.

Commission.

The Commission shall maintain proper accounts and other 47. (1)relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

audit of Commission.

- The accounts of the Commission shall be audited by the Comptroller (2)and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.
- The Comptroller and Auditor-General or any person appointed by (3) him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission:
- The accounts of the Commission, as certified by the Comptroller and (4) Auditor-General or any other person appointed by him in this behalf. together with the audit report thereon shall be forwarded annually to the State Government by the Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.
- The Commission shall prepare once every year in such form Annual report of and at such time as may be prescribed, an annual report including a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.

Commission.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER X

ARBITRATION AND APPEALS

Arbitration by Commission.

- 49. (1) (a) Notwithstanding anything contained in the Arbitration and Conciliation Act, 1996, any dispute arising between licensees shall 26 of 1996. be referred to the Commission.
- (b) The Commission may proceed to act as an arbitrator or nominate an arbitrator or arbitrators to adjudicate and settle such dispute.
- (c) The practice and procedure to be followed in connection with any adjudication and settlement under this section shall be such as may be specified by the Commission by regulations.
- (2) Where an award is made by the arbitrator appointed by the Commission, it shall be filed before the Commission and the Commission shall be entitled to pass such order as deemed fit including an order-
 - (a) confirming and enforcing the award;
 - (b) setting aside or modifying the award; or
 - (c) remitting the award to the arbitrator for reconsideration.
- (3) An award made by the Commission under sub-section (1) or an order passed by the Commission under sub-section (2) shall be deemed to be a decision or order of the Commission
- (4) An award made by the Commission under sub-section (1) or an order passed by the Commission under sub-section (2) shall be enforceable as if it were a decree of a civil court.
- (5) The Commission may make such interim orders as the Commission considers appropriate at any time during the pendency of the proceedings under this section.

Appeals against the orders of the Commission.

50. (1) Any person aggrieved by any decision or order of the Commission passed under this Act may file an appeal to the High Court, on question of law arising out of such decision or order.

- (2) Subject to the provisions of sub-section (4), no appeal shall be entertained unless it is filed within sixty days from the date of decision or order appealed against.
- (3) The High Court may admit an appeal after the period of limitation specified in sub-section (2), if the appellant satisfies the High Court that he had sufficient cause for not filing appeal within such period.
- (4) In computing the period of limitation the provisions of sections 4 and 12 of the Limitation Act, 1963 shall so far as may be, apply.
- 34 of 1959. (5) Notwithstanding anything contained in the Bombay Court Fees Act, 1959, an appeal under this section shall bear a court fee stamp of such value as may be prescribed.
 - 51. Every order passed under this Act or the rules or regulations made thereunder by the Commission or by any officer appointed by it, shall subject to appeal under section 50, be final and shall not be called in question in any civil court.

Finality of decision of Commission.

Explanation.- For the purposes of sections 51 and 52, the civil court means the courts subordinate to the High Court.

52. Save as otherwise provided in this Act no Civil Court shall have jurisdiction to deal with or decide any question which the Commission or any officer appointed by it is empowered to deal with or decide by or under this Act.

Bar of \
jurisdiction of civil court.

CHAPTER XI

OFFENCES AND PENALTIES

53. Whoever carries on business of transmitting, distributing or supplying electricity in the State in contravention of sub-section (1) of section 19 shall on conviction be punishable with imprisonment which may extend to six months or with fine not exceeding five lakhs rupees, or with both and in the case of a continuing offence with an additional fine not exceeding twenty thousand rupees for every day after the first, during which the offence continues.

Penalty for contravention of section 19.

54. Where a licensee or any other person fails without reasonable General penalty. excuse, to comply with any order, direction or requisition lawfully made or

given under any provision of this Act or any rule or regulation made thereunder, he shall on conviction be punishable with imprisonment which may extend to three months or with fine not exceeding two lakh rupees or with both and in the case of a continuing offence with an additional fine not exceeding ten thousand rupees for every day after the first, during which the offence continues.

Offences by companies.

55. Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Notwithstanding anything contained in sub-section (1), wherein an offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:- For the purpose of this section-

- "company" means a body corporate and includes a firm or other (a) association of individuals; and
- (b) "director" in relation to a firm, means a partner in the firm

Cognisance of offences.

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences under sections 53 and 54 shall be cognisable 2 of 1974. by the Metropolitan Magistrate or the Magistrate of the First Class and no such Magistrate shall take cognisance of the offence except on a complaint in writing made by an officer of the Commission generally or specially authorised in this behalf by it;
- Notwithstanding anything contained in section 200 of the said Code, it shall not be necessary in respect of the offences referred to in sub-section

- (1), to examine the authorised officer of the Commission when the complaint is presented in writing.
- 57. (1) The Commission may, either before or after the institution of proceedings, for any offence punishable under section 53 or 54 accept from any person charged with such offence by way of composition of the offence a sum not exceeding

Compounding of offences.

- five lakh rupees, where the offence charged is under section 53, and
- two lakh rupees, where the offence charged is under (ii) section 54.
- On payment of such sum as determined by the Commission under sub-section (1), the accused person if in custody shall be set at liberty and if proceedings shall have been instituted against the accused in any criminal court, the composition shall be held to amount to an acquittal and no further proceedings shall be taken against the accused person in respect of that offence.

CHAPTER XII

MISCELLANEOUS

The fees, fines, charges and such other sums due to the Commission under this Act shall be recoverable as arrears of land revenue.

Recovery of fees, fines, charges, etc.

59. The Commission or the Court imposing fine under this Act may direct that the whole or any part thereof shall be applied towards payment of the costs of the proceedings.

Application of

60. All proceedings before the Commission shall be deemed to be Proceedings judicial proceedings within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

before Commission.

XLV of 1860.

Members, officers and servants of the Commission and members of Selection Committee to be public servants. 61. All members and officers and employees of the Commission and members of Selection Committee and the search committee shall when acting or purporting to act in pursuance of the provisions of this Act or any rule or regulation made thereunder, be deemed to be a public servant within the meaning of section 21 of Indian Penal Code.

XLV of 1860.

Protection of action taken in good faith.

62. No suit, prosecution or other legal proceedings shall lie against the Commission or Selection Committee or the search committee, any member, officer or employee of the Commission or Selection Committee for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or rules or regulations made thereunder.

Power of the State Government to give directions. 63. The State Government may give directions not inconsistent with the provisions of this Act to the Commission on matters of policy and of public interest including the matters relating to planning and co-ordination of the development of the electricity industry and the Commission shall comply with such directions:

Provided that the State Government shall not give any directions to the Commission in respect of fixation of tariff.

Power of State Government to make rules.

- 64. (1) The State Government may, by notification in the Official Gazette make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) the salaries and allowances payable to and other conditions of service of members of Commission under sub-section (4) of section 7;
 - (b) the form and manner in which and the authority before whom the oath of office and secrecy shall be subscribed by the Chairperson and members under section 8;
 - (c) the period of notice of resignation to be given in writing under sub-section (3) of section 10;

- the form of application for grant of sanction to engage in the (d) business or activity of transmission, distribution or supply of electricity and the fees to be paid therefor under section 27;
- the form and manner in which the information relating to (e) establishment, acquisition, extension, or replacement of a generating station is to be furnished to the State Government under section 31;
- the form in which and the time at which the Commission (f) shall prepare its budget under section 46;
- the form in which annual statement of accounts shall be (g) prepared by the Commission under sub-section (1) of section 47;
- the form in which and the time at which the Commission (h) shall prepare the annual report under sub-section (1) of section 48;
- the value of court fee stamp which an appeal shall bear under (i) sub-section (5) of section 50;
- any other matter which is to be, or may be, prescribed under (j) this Act.
- All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to the rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.
- Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.
- The Commission may by notification in the Official Gazette, (1)65. make regulations not inconsistent with the Act and the rules made thereunder, for enabling it to discharge its functions under this Act.

Power of Commission to make regulations.

In particular, and without prejudice to the generality of the foregoing provisions such regulations may provide for all or any of the following matters, namely:-

- (a) the rules of procedure to be followed by the Commission in regard to the transaction of its business at meetings under sub-section (1) of section 12;
- (b) the manner of recruitment of, the salary and allowances payable to and other conditions of service of the Secretary, officers and other employees of the Commission, under subsection (2) of section 13;
- (c) the terms and conditions on which consultants may be appointed under section 14;
- (d) any other matter in respect of which the Commission shall have the powers of a civil court;
- (e) the form of application for grant of a licence and fees to be paid therefor, under sub-section (1) of section 20;
- (f) the time within which, the manner in which and the particulars with which the notice of the application shall be published under sub-clause (ii) of clause (a) of sub-section (2) of section 20 and the period not less than a month before the expiration of which objections if any, received are to be considered under proviso to sub-clause (i) of clause (b) of sub-section (2) of section 20;
- (g) the conditions to be included in a licence under clause (b) of sub-section (3) of section 20;
- (h) functions and obligations of the Board under the Electricity Act, 1910 and the Electricity (Supply) Act, 1948 to be undertaken by a licensee, under sub-clause (iv) of clause (b) of sub-section (3) of section 20;

9 of 1910. 54 of 1948.

- (i) the manner in which and particulars with which notice of application proposing an amendment in the licence is to be published under clause (a) of sub-section (2) of section 22;
- (j) the manner in which and particulars with which proposed amendments in licence otherwise than on application are to be published under sub-section (3) of section 22;
- (k) governing the power purchase and procurement process under clause (b) of sub-section (3) of section 25;

- (1) the conditions subject to the compliance of which exemption to any person from the requirement of a licence shall be granted under sub-section (1) of section 26 and the guidelines under sub-section (3) of the said section 26 having regard to which exemption shall be granted;
- (m) terms and conditions for fixation of tariff to be charged by the licensee under sub-section (2) of section 32;
- (n) the time at which and the manner in which the licensee shall provide the Commission the information under sub-section (6) of section 32.
- (o) imposition of fines and charges under sub-section (1) of section 39;
- (p) the circumstances in which licensees shall inform consumers of electricity of their rights in relation to supply of electricity and compensation to be paid for delay or default in supplying electricity to consumers on the part of the licensees under section 43; and
- (q) the practice and procedure to be followed in connection with adjudication and settlement under clause (c) of sub-section (1) of section 49.
- (3) In making regulations under this section, the Commission may direct that a breach thereof shall be punishable with fine not exceeding five lakks rupees and when the breach is a continuing one, with fine not exceeding twenty thousand rupees for every day during which the breach continues after conviction for first breach.
- (4) All regulations made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made.
- 66. If any difficulty arises in giving effect to the provisions of this Act, the State Government may by order published in the *Official Gazette*, make such provision, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

Amendment of IX of 1910.

67. (1) In the Indian Electricity Act, 1910 in its application to the State 9 of 1910. of Gujarat, in section 36, after sub-section (2), the following sub-section shall be added, namely:-

"(2) Notwithstanding anything to the contrary contained in subsection (2) or any other provision of this Act, an appeal shall lie from the decision of the electrical inspector appointed by the State Government to the Gujarat Electricity Regulatory Commission referred to in section 3 of the Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003.".

Guj. of 2003.

Amendment of 54 of 1948.

- 68. In the Electricity (Supply) Act, 1948 in its application to the State of 54 of 1948. Gujarat-
- (1) in section 5-
 - (a) for sub-section (2), the following shall be substituted, namely:-
 - "(2) The Board shall consist of such number of members not less than three but not more than ten as the State Government may, from time to time by notification in the Official Gazette, specify.";
 - (b) for sub-section (5), the following sub-section shall be substituted, namely:-
 - "(5) The State Government may, from time to time, by notification in the *Official Gazette*, designate the members of the Board as Chairman, Vice-Chairman, Chief Executive Officer and full time members and prescribe the functions to be discharged by such members.";
- (2) in section 44-.
 - (a) for the word "Board" wherever it occurs, the word "Commission" shall be substituted;
 - (b) after sub-section (2-A), the following sub-section shall be inserted, namely:-
 - "(3) Where the Commission is of the opinion that the grant of consent under sub-section (1) is likely to adversely affect

the operation of the Power System or development of electricity industry in the State or is not in public interest, it may refuse to give consent.".

CHAPTER XIII

EFFECT ON EXISTING CENTRAL LEGISLTION

9 of 1910. 54 of 1948. 69. (1) The provisions of this Act shall have effect notwithstanding that the same are inconsistent with the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply), Act, 1948, in their application to the State of Gujarat which continue to apply after the commencement of this Act.

Effect of Act on IX of 1910 and 54 of 1948.

9 of 1910. 54 of 1948. (2) Notwithstanding anything contained in the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948, in their application to the State of Gujarat, the Board and the State Government shall cease to exercise such powers and perform such functions to regulate the Electricity Industry in the State, which have been conferred or imposed on the Commission under this Act.

9 of 1910.

- (3) (a) In respect of matters provided in sections 3 to 11, 27D and 28 of the Indian Electricity Act, 1910, in its application to the State of Gujarat (hereinafter in this sub-section referred to as "the said Central Act") to the extent this Act has made specific provisions, the said provisions of the said Central Act shall cease to apply in the State.
 - (b) Notwithstanding that the provisions of the said Central Act referred to in sub-clause (a) have ceased to apply, anything done or any action taken under the provisions which have so ceased to apply, shall be deemed to have been done or taken under the corresponding provisions of this Act and accordingly a licence granted under the ceased section 3 of the said Central Act and subsisting on the date of commencement of this Act shall be deemed to be a licence granted under section 20 of this Act and shall be valid until substituted, suspended or revoked under the provisions of this Act and a sanction given under ceased section 28 of the said Central Act shall be deemed to be a sanction granted under section 26 of this Act and shall be valid until the expiry of its period.
 - (c) Any reference to a "licence" or "transmission licence" in the said Central Act shall be construed as a reference to a licence granted or deemed to have been granted under this Act and a

reference to "licensee" or "licence holder", or "transmission licensee" or "transmission licence holder" in the said Central Act shall be construed accordingly.

54 of 1948.

- (a) In respect of matters provided in sections 43A, 45 to 47, 50, 52, 56 to 59 of the Electricity (Supply) Act, 1948, in its application to the State of Gujarat (hereinafter in this sub-section referred to as "the said Central Act") to the extent this Act has made specific provisions, the said provisions of the said Central Act shall cease to apply in the State.
 - (b) Notwithstanding that the provisions of the said Central Act referred to in sub-clause (a) have ceased to apply, anything done or any action taken under the provisions which have ceased to apply, shall be deemed to have been done or taken under the corresponding provisions of this Act.
 - (c) Any reference to a "licence" or "transmission licence" in the said Central Act shall be construed as a reference to a licence granted or deemed to have been granted under this Act and a reference to "licensee" or "licence holder", or "transmission licensee" or "transmission licensee holder" in the said Central Act shall be construed accordingly.

Effect of the Act on 14 of 1998.

70. (1) The provisions of Chapters IV and V and sections 29, 30, 33, 34, 36, 39, 57, 58 and 59 of the Electricity Regulatory Commissions Act, 1998 shall cease to apply in the State (hereinafter referred to as "the ceased provisions") and on such cesser, the following consequences shall ensue, namely:-

14 of 1998.

- (i) the Commission established under the ceased provisions and functioning immediately before the date of commencement of this Act (hereinafter called "the said Commission") shall be deemed to be the Commission established under subsection (1) of section 3,
- (ii) the Chairperson and members of the said Commission holding office immediately before the said date shall respectively be the Chairperson and the members of the Commission,
- (iii) the Chairperson and the members shall hold office as such Chairperson and members for the period for which they would have held office under the said Act, subject however

to the provisions relating to disqualification, resignation, removal and vacancy provided in this Act,

- (iv) all properties, moveable and immovable and assets vesting in the said Commission shall stand transferred to and vest in the Commission,
- (v) all rights, liabilities and obligations of the said Commission (including those arising under any agreement or contract) shall be deemed to be the rights, liabilities and obligations of the Commission,
 - (vi) all sums due to the said Commission shall be recoverable by the Commission, and for the purpose of such recovery, the Commission shall be competent to take such measures which were competent for the said Commission to take subject to all limitations, conditions and rights or interests of any person subsisting immediately before the said date,
 - (vii) all contracts made with and all instruments executed on behalf of the said Commission shall be deemed to have been made with or by or on behalf of the Commission and shall have effect accordingly,
 - (viii) all proceedings and matters pending before the said Commission or any authority of the said Commission under the ceased provisions immediately before the said date shall be deemed to be transferred to the Commission or to such authority as the Commission may direct,
 - (ix) in all suits and legal proceedings pending on the said date in or to which the said Commission was a party, the Commission shall be deemed to be substituted therefor,
 - (x) all officers and employees of the said Commission shall be the officers and employees of the Commission,
 - (xi) any reference to the said Commission in any instrument shall unless a different intention appears to be construed as a reference to the Commission.
- (2) Notwithstanding the cesser of the provisions of the said Act referred to in sub-section (1) but subject to the consequences referred to in the said sub-section (1) anything done or any action taken under the ceased

provisions shall be deemed to have been done or taken under the corresponding provisions of this Act.

Application of section 7 of Bom. I of 1904.

Without prejudice to the provisions contained in clause (b) of sub-section (3) of section 69, clause (b) of sub-section (4) of that section and sub-sections (1) and (2) of section 70 but subject to consequences referred to in sub-section (2) of section 70, section 7 of the Bombay General Clauses Act, 1904 shall apply in relation to the cesser provided in clause (a) Bom. I of of sub-section (3) of section 69. clause (a) of sub-section (4) of that section 1904. and sub-section (1) of section 70 as if such cesser were repeal.

Saving.

Notwithstanding anything contained in this Act, the powers, rights and functions of Regional Electricity Board, the Central Electricity Authority, the Central Government and Authorities, other than the State Electricity Board and the State Government under the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948 or rules framed thereunder shall remain unaffected and shall continue to be in force.

9 of 1910. 54 of 1948.

- Nothing contained in this Act will apply to the Power Grid Corporation, or other bodies or licensees in relation to the inter State transmission of the electricity or Generation Companies owned or controlled by Central Government or undertaking owned by the Central Government in relation to the generation and sale of electricity to licensees and other persons authorized to engage in the transmission, distribution or supply of electricity in the State.
- All decisions and orders of the State Commission made prior to the commencement of this Act shall be valid and binding.

STATEMENT OF OBJECTS AND REASONS

The Gujarat Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 is entrusted with the functions of generation, transmission, bulk purchase and supply and distribution of electricity in most of the areas of the State. In some other areas of the State certain other companies being licensees and sanction holders, are entrusted with the functions of generation and supply of electricity under The Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948. The State Government as well as the Board have powers to regulate the generation, supply and distribution of electricity.

It is considered necessary to reorganise and rationalise the Government Electricity industry including the Board in the State with a view to enhancing efficiency and financial viability in respect of generation, transmission, bulk purchase, supply and distribution of electricity and service to consumers in the State. For this purpose, it is proposed to establish an electricity regulatory commission and to reorganise the Government Electricity Industry including the Board.

At present the Gujarat Electricity Regulatory Commission constituted under the Electricity Regulation Commissions Act, 1998 is functioning as the sole regulatory authority in the State divesting the Board and the State Government of their regulatory powers. However, the said Central Act does not provide for reorganisation of the Government Electricity Industry including the Board. It is therefore considered necessary to replace the said Central Act by a State Act which provides not only for establishment of State Electricity Regulatory Commission and for replacement of the existing Commission but also for restructuring of the Government Electricity Industry including the Gujarat Electricity Board. The essence of restructuring is to achieve the balance required to be maintained in regard to competitiveness and efficiency of the electricity industry on the one hand and ensuring fair deal to the consumers on the other. It is proposed to entrust the Commission so established certain functions, important of which are as follows:

- (i) regulation of purchase, transmission, distribution, supply and utilisation of electricity;
- (ii) determination of tariff for electricity, wholesale, bulk, grid or retail;
- (iii) regulating the working of the licensecs and ensuring that their working is efficient, economical and equitable;

- (iv) setting up and enforcing standards in electricity industry in the State including standards relating to safety, quality, continuity and reliability of service:
- (v) promoting competitiveness in the electricity industry in the State; and
- (vi) adjudicating upon the disputes and differences between the licensees.

Prohibition is sought to be imposed on a licence against supply of electricity on and after the date of commencement of this Act without installation of a meter. However, it is proposed to continue supply of electricity to agriculturists without installation of a meter till 30th June, 2006.

The demand for electricity in the State is likely to increase manifold and therefore it would be necessary to generate, transmit, distribute and supply electricity on a very large scale and for that purpose huge capital investment would be required. It is therefore proposed to restructure the Gujarat Electricity Board by formulating transfer schemes which will divide functions of generation, transmission and distribution of electricity and entrusting them separately initially to Government companies or bodies corporate owned or controlled by the State Government and thereafter, to independent companies established under the Companies Act, 1956 and to allow the Board to continue its activity of bulk purchase and supply of electricity. Such functions along with the related property of the Board are proposed to be transferred to the companies gradually.

With a view to create conducive atmosphere for augmenting electricity generating capacity in the State, it is proposed to remove the restriction imposed under the Electricity (Supply) Act, 1948 by deleting certain provisions of that Act relating to Generating Company.

It is also considered necessary to entrust to the State Government the function of granting sanction for supply of electricity temporarily for a period not exceeding six months to an area where it is urgently needed.

This Bill seeks to achieve the aforesaid objects.

Following notes on clauses explain the important provisions of the Bill:

Clause 1.- This clause relates to short title, extent and commencement.

Clause 2.- This clause defines certain terms used in the Act.

- Clause 3.- This clause provides for establishment and incorporation of Gujarat Electricity Regulatory Commission. It also provides that the Gujarat Electricity Regulatory Commission established under the Electricity Regulatory Commissions Act, 1998 shall be the first Commission under this Clause.
- Clause 5,- This clause provides for constitution of the Commission.
- Clause 6.- This clause provides for constitution of Selection Committee and its function.
- Clause 7.- This clause provides for term of office and conditions of service of members of the Commission.
- Clause 9.- This clause provides for disqualification of members of Commission.
- Clause 10. This clause provides for removal and resignation of members of the Commission.
- Clause 12 .- This clause provides for meeting of the Commission.
- Clause 13.- This clause provides for appointment of Secretary, officers and employees of the Commission.
- Clause 14.- This clause empowers the Commission to appoint consultants.
- Clause 15.- This clause provides for funding of expenses of the Commission.
- Clause 17.- This clause provides for the functions to be performed by Commission.
- Clause 18.- This clause provides for powers of the Commission.
- Clause 19.- This clause imposes prohibition against carrying on the business of transmission or supply of electricity without licence and prohibits after specified date, the supply of electricity by a licensee without connecting a meter.
- Clause 20.- This clause empowers the Commission to grant licence.
- Clauses 22 and 23.- These clauses provide for amendment and revocation of licence.

Clause 24.- This clause contains provisions which shall apply in a case where licence is revoked.

Clause 25.-: This clause imposes restrictions on licensees.

Clause 26.- This clause empowers the Commission to grant exemption to a person from the requirement of a licence.

Clause 27.- This clause empowers the State Government to grant sanction to a person to engage temporarily for a period not exceeding six months in the business of transmission, distribution or supply of electricity in case of emergency.

Clause 28.- This clause empowers the State Government to publish schemes to reorganise the Government Electricity Industry and to effect transfer of its functions, duties, powers and obligations and undertaking initially to Government companies or bodies corporate owned or controlled by the State Government and thereafter to companies not owned or controlled by Government.

Clause 29.- This clause provides for transfer of personnel of Government Electricity Industry.

Clause 31.- This clause provides for furnishing information to the State Government and to the Commission regarding establishment of generating stations or acquisition of generating stations.

Clause 32.- This clause empowers the Commission to determine the tariff for intra state transmission of electricity and the tariff for distribution and supply of electricity (wholesale, bulk or retail) in accordance with the terms and conditions laid down in regulations in the light of factors specified therein.

Clause 33.- This clause empowers the State Government to extend financial assistance to the licensees by way of grant of subventions, loans or giving of guarantees.

Clause 34.- This clause empowers the Commission to make interim order for preventing contraventions by licensee of any provisions of the Act or rules or regulations made thereunder or any of the conditions of licence.

Clause 35.- This clause empowers the Commission to make final order or to declare an interim order to be a final order so as to prevent contraventions of the provisions of the Act or rules and regulations made thereunder or any of the conditions of the licence.

Clause 38.- This clause empowers the Commission to assume management or control of undertaking for maintaining continued transmission, distribution or supply of electricity in public interest.

Clause 39.- This clause empowers the Commission to levy fines and charges.

Clause 41.- This clause empowers the Commission to constitute an Advisory Committee in consultation with the State Government to advise the Commission on certain matters stated therein.

Clause 42.- This clause empowers the Commission to lay down performance standards for supply of electricity.

Clause 45:- This clause imposes restrictions on the Commission in respect of disclosure of information relating to business of generation, transmission, distribution and supply of electricity carried on by any person.

Clause 46.- This clause requires the Commission to prepare budget in each financial year.

Clause 47.- This clause requires the Commission to maintain proper accounts and other relevant records and to get it audited by the Comptroller and Auditor General. It also requires Accounts as certified by the Comptroller and Auditor General together with audit report to be provided to the State Government and the State Government to cause the Accounts and Reports to be laid before the State Legislature.

Clause 48.- This clause requires the Commission to prepare an annual report and provide for laying of such report before the State legislature.

Clause 49.- This clause provides for arbitration by the Commission in respect of any dispute arising between the licensees.

Clause 50.- This clause provides for appeal to the High Court against the orders of the Commission on questions of law against the decisions and orders of the Commission.

Clause 51.- This clause provides for finality to the decision of the Commission.

Clause 52.- This clause bars the jurisdiction of civil courts.

Clause 53.- This clause provides for imposition of penalty for carrying on business of transmitting or supplying of electricity without a licence.

Clause 54.- This clause provides for imposition of general penalty to be imposed on a licensee or any person who fails to comply with any order, direction or requisition made or given under the provisions of the Act or any rules or regulations made thereunder.

Clause 56.- This clause provides for cognisance of offences.

Clause 57.- This clause provides for compounding of offences.

Clause 61.- This clause provides that the members, officers and servants of the Commission, members of the Selection Committee and the search committee shall be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 62.- This clause provides for protection of action taken in good faith.

Clause 63.- This clause empowers the State Government to give directions to the Commission on matters of policy.

Clause 64.- This clause empowers the State Government to make rules generally for carrying out the purposes of the Act and particularly in respect of matters specified therein.

Clause 65.- This clause empowers the Commission to make regulation with the previous approval of the State Government generally for enabling it to discharge its functions under the Act and particularly in respect of matters specified therein.

Clause 66.- This clause empowers the State Government to make an order to remove any difficulty arising within three years from the commencement of this Act.

Clause 67.- This clause seeks to amend the Indian Electricity Act, 1910 in its application to the State.

Clause 68.- This clause seeks to amend the Electricity (Supply) Act, 1948 in its application the State.

Clause 69.- This clause provides for effect of the Act on the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948.

Clause 70.- This clause provides for effect of the Act on Electricity Regulatory Commissions Act, 1998.

Clause 71.- This clause provides for application of section 7 of the Bombay General Clauses Act, 1904.

Clause 72.- This clause provides for saving of certain things.

SAURABH PATEL

FINANCIAL MEMORANDUM

This Bill if enacted and brought into force would involve following expenditure from the Consolidated Fund of the State.

Sub-clause (4) of clause 7 empowers the State Government to prescribe the salary and allowances payable to the members of the Gujarat Electricity Regulatory Commission. This would involve an annual recurring expenditure to the extent of fifty-five lakh rupees.

Sub-clause (1) of clause 13 empowers the Commission to appoint Secretary, officers and other employees of the Commission. This would involve an annual recurring expenditure to the extent of one crore rupees.

SAURABH PATEL

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers in the following respects, namely:-

Clause 1.- Sub-clause (3) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.

Clause 3.- Sub-clause (1) of this clause empowers the state Government to establish, by notification in the Official Gazette, the Gujarat Electricity

Regulatory Commission with effect from the date as specified in that notification.

Clause 4.- This clause empowers the State Government to specify, by notification in the *Official Gazette*, any place other than Ahmedabad as the Headquarters of the Commission.

Clause 5.- Sub-clause (5) of this clause empowers the State Government to direct by notification in the Official Gazette that all the functions and powers of the Commission shall be performed or exercised by such person or persons as the Government may appoint.

Clause 7.- Sub-clause (4) of this clause empowers the State Government to prescribe, by rules, the salary and allowances payable to and other conditions of service of members of the Commission.

Clause 8.- This clause empowers the State Government to prescribe by rules the form in which and the manner in which and the authority before which the oath of office and secrecy shall be made and subscribed.

Clause 10.- Sub-clause (3) of this clause empowers the State Government to prescribe by rules, the period of notice of resignation to be given by the Member.

Clause 12.- Sub-clause (1) of this clause empowers the Chairman or senior member to fix the day, the time and the place of the meetings of the Commission and empowers the Commission to prescribe by regulations, the procedure to be followed with regard to the transaction of business at such meetings.

Clause 13.- Sub-clause (2) of this clause empowers the Commission to prescribe by regulations, the manner of recruitment, the salary and allowances payable to and other conditions of service of, the Secretary, officers and other employees of the Commission.

Clause 14.- This clause empowers the Commission to prescribe by regulations, the terms and conditions of appointment of consultants.

Clause 15.- Sub-clause (2) of this clause empowers the Commission to prescribe by regulations, the fees and charges levied on application to the Commission.

Clause 18.- Paragraph (g) of sub-clause (1) of this clause empowers the Commission to prescribe, by regulations, the other matters in respect of which the Commission shall have the powers of a civil court.

- Clause 19.- The first proviso to sub-clause (1) of this clause empowers the Commission to specify by notification in the Official Gazette, the terms and conditions subject to which the Board, Government company or body corporate owned or controlled by the State Government shall carry on business of transmitting, distributing or supplying (whether in bulk or not) electricity.
- Clause 20.- (i). Sub-clause (1) of this clause empowers the Commission to prescribe by regulations, the form of application for grant of a licence and fees to be paid therefor;
- (ii) sub-paragraph (ii) of paragraph (a) of sub-clause (2) of this clause empowers the Commission to prescribe by regulations, the time within which, the manner in which and particulars with which a notice for application for licence is to be published;
- (iii) proviso to sub-paragraph (i) of paragraph (b) of sub-clause (2) of this clause empowers the Commission to consider those objections which are received before such period as the Commission may by regulations specify;
- (iv) (a) paragraph (b) of sub-clause (3) of this clause empowers the Commission to prescribe by regulations the conditions to be included in the licence requiring a licensee to do certain things specified therein;
 - (b) sub-paragraph (iv) of paragraph (b) of sub-clause (3) of this clause empowers the Commission to prescribe, by regulations, the functions and obligations of the Board under the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 to be undertaken by a licensee.
- Clause 22.— (i) Paragraph (a) of sub-clause (2) of this clause empowers the Commission to prescribe, by regulations, the manner in which and particulars with which notice of application proposing an amendment in the licence is to be published;
- (ii) sub-clause (3) of this clause empowers the Commission to prescribe, by regulations, the manner in which and particulars with which the proposed amendments in licence otherwise than on application by a licensee are to be published.
- Clause 24.- Sub-paragraph (i) of paragraph (a) of sub-clause (4) of this clause empowers the Commission to authorise, by an order published in the

Official Gazette, any person or body of persons to take over the management of undertaking of the licensee.

Clause 25.- Paragraph (b) of sub-section (3) of this clause empowers the Commission to make regulations governing the power purchase and procurement process.

Clause 26.- Sub-clause (1) of this clause empowers the Commission to make a general or special order for granting exemption to any person from requirement of a licensee.

Clause 27.- This clause empowers the State Government to prescribe by rules, the form in which an application may be made by a person for sanction for supply of electricity and the fees on payment of which such sanction may be granted.

- Clause 28.- (i) Sub-clause (1) of this clause empowers the State Government to publish schemes by notification in the Official Gazette to reorganise the Government Electricity Industry and to effect the transfer of such functions etc., and such undertakings of the industry and on such terms and conditions as the State Government may provide:
- (ii) sub-clause (3) of this clause empowers the State Government to publish schemes by notification in the Official Gazette to effect transfer of undertakings which vest in the State Government to such Government companies or bodies corporate owned or controlled by the State Government on such terms and conditions and with such functions etc., as the State Government may provide in the transfer schemes;
- (iii) sub-clause (4) of this clause empowers the State Government to publish schemes by notification in the Official Gazette to transfer and vest in any other company, body corporate or person or authority part of the undertakings from the first transferee on such terms and conditions and with such functions etc., as the State Government may specify;
- (iv) sub-clause (5) empowers the State Government to provide by notification in the Official Gazette that such of the functions etc., exercisable by the first transferee or the second transferee or by other bodies, etc.
- Clause 29.- Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the terms and conditions on which personnel of

the Board shall be transferred to the first transferee or from first transferee to the second transferee.

- Clause 31.- (i) Sub-clause (1) of this clause empowers the State Government to prescribe by rules the form and manner in which information relating to establishment, acquisition, extension or replacement of generating station may be furnished to the State Government;
- (ii) sub-clause (2) of this clause empowers the State Government to prescribe by rules the information which a generating company shall make available to the State Government, Commission and licensees relating to matters specified in the said sub-clause (2).
- Clause 32.- (i) Sub-clause (2) of this clause empowers the Commission to determine by regulations, the terms and conditions for fixation of tariff;
- (ii) sub-clause (6) of this clause empowers the Commission to specify by regulations, the time at which and the manner in which the licensee shall provide the information referred to therein to the Commission.
- Clause 38.- Sub-clause (1) of this clause empowers the Commission to authorise any person or body of persons by an order notified in the Official Gazette to take over the management of the whole or part of the undertaking of a licensee.
- Clause 39.- Sub-clause (1) of this clause empowers the Commission to impose fines and charges as may be specified in the regulations.
- Clause 41.- Sub-clause (1) of this clause empowers the Commission to constitute by notification in the Official Gazette, an Advisory Committee.
- Clause 43.- This clause empowers the Commission to specify by regulations, the circumstances in which the licensee shall inform the consumers in respect of their rights relating to supply of electricity and the compensation to be paid for delay or default by the licensee in supplying electricity.
- Clause 46.- This clause empowers the State Government to prescribe by rules the form in which and the time at which the Commission shall prepare its budget.

Clause 47.- This clause empowers the State Government to prescribe by rules, the form in which the Annual Statement of Accounts shall be prepared by the Commission.

Clause 48.- Sub-clause (1) of this sub-clause empowers the State Government to prescribe, by rules, the form in which and the time at which the Commission shall prepare its Annual Report.

Clause 49.- Paragraph (c) of sub-clause (1) of this clause empowers the Commission to specify, by regulations, the procedure to be followed in adjudication.

Clause 50.- Sub-clause (5) of this clause empowers the State Government to prescribe by rules, the value of court fee stamp which an appeal shall bear.

Clause 63.- This clause empowers the State Government to make, by notification in the Official Gazette, rules generally for carrying out the purposes of the Act and particularly for all or any of the matters specified in sub-clause (2) of this clause.

Clause 65.- This clause empowers the Commission to make, by notification in the Official Gazette, regulations not inconsistent with the Act and the rules made thereunder generally for enabling it to discharge its functions under the Act and particularly for all or any of the matters specified in subclause (2) of this clause.

Clause 66.- This clause empowers the State Government to make, by an order published in the Official Gazette, such provisions not inconsistent with the Act as appear to it to be necessary or expedient for removing any difficulty in giving effect to the provisions of the Act.

The delegation of legislative power as aforesaid is necessary and is of a normal character.

Dated the 12th March, 2003.

SAURABH PATEL.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 13th March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.

W.O. No. 985. 12/5/2003. Extra No.27





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 12th March, 2003 by Shri Dr. Chandrikaben Chudasama M.L.A. is published under rule 127-a of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 27 OF 2003.

THE GUJARAT PREVENTION OF ACCIDENTS ON HIGHWAYS BILL, 2003.

A BILL

tomake provisions for prevention of accidents on highways and for matters connected therewith.

It is hereby enacted in the Fifty-fourth year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Prevention of Accidents on Highways Act, 2003.

Short title, and commencement.

- (2) It shall come into force at once.
- Definitions
- 2. In this Act, unless the context otherwise requires,—
 - (a) "Special Authority" means the Authority constituted under section-3 of this Act.
 - (b) "Highway" means, State Highways, National Highways and such other Roads as may be classified as such by the State Government.
 - (c) "Traffic Police" means a section of the Gujarat Police looking after the regulations of Highways Traffic.
 - (d) The expressions which are used, but not defined shall have the same LIX of 1988. meaning has been given in the Motor Vehicles Act, 1988.

Establishment of Special Authority.

- 3. (1) The State Government shall by notification in the Official Gaztte etstablish a special Authority to Supervise and work for the prevention of accidents on highways in the State of Gujarat.
- (2) The Special Authority shall consist of the Chairman and such other members not exceeding 14 as may be appointed by the State Government:

Provided that atleast two members of the Gujarat Legislative Assembly shall be appointed on the Special Authority.

Tenure of the members of the Special Authority.

4. (1) The Chairman and members of the Special Authority shall be appointed for period of 3 years from the date of appointment:

Provided that the members of Gujarat Legislative Assembly shall continue to be members for full term of the Special Authority eventhough they cease to be members of the Assembly.

Payment of Allowances to the Chairman and other members of the Special Authority.

5. The Chairman and members of the Special Authority shall not be entitled to receive any salary but they shall be entitled to receive the allowances for performing their duties as may be determined by Government.

Staff under the Special Authority.

- 6. (1) The staff under the Special Authority shall consist of :-
 - (a) Secretary, who shall be appointed by the Government and;
- (b) Such other employees as the Special Authority may, with the previous approval of the State Government, appoint from time to time.
- (2) The Salary of the Secretary and other employees shall be such as may be prescribed.
- (3) The other terms and conditions of the services of the Secretary and other employees shall be such as may be prescribed.

Functions of the Special Authority.

7. The function of the Special Authority shall be:

- (a) to supervise the road traffic and to suggest the measures for avoiding accidents on the highways.
- (b) to keep record of accidents and to find out the common causes of the accidents and to suggest the remedial measures.
 - (c) to suggest changes in the existsing highway traffic rules.
- (d) The State highwaay police shall implement the suggestions made by the Special Authority and shall also carry out the instructions issued by it and will provide necessary assistance to the Authority.

Rules.

- 8. (1) The State Government may frame the rules by notification in the Official Gazette to carry out the objects of the Act.
- (2) The rules made under this Section shall be made before the Legislature of the State at the session thereof next following and shall be liable to be modified or rescinded by a resolution passed by the Legislature and such rules after notifying in the Official Gazette, be deemed to have been modified or rescineded accordingly.

STATEMENT OF OBJECTS AND REASONS

At present the Road Accident on the Highways of Gujarat are increasing at an alarming rate. Every day several accidents occur on the Highways receives in loss clives of the people and also making many people invalid by servere and permanent injuries;

The exiting machinery of highway Police which looks after the highway traffic is not sufficient to check the highway accident.

Therefore, a separate Special Authority is proposed to be set up to suggest measures and issue directions to the Highway Traffic Police with a view to control and minimise accidents taking places on highways of Gujarat.

Dated the 22nd February, 2003 Gandhinagar.

DR. CHANDRIKABEN CHUDASAMA, M.L.A.

FINANCIAL MEMORANDUM

Section 5 and 6 of the bill provides for giving salaries and allowances to the Chairman, Members and Staff of the Special Authority which may involve expenditure from the Consolidated Fund of the State of about Rs. 15 lacs per years.

Dated the 22nd February, 2003 Gandhinagar,

DR. CHANDRIKABEN CHUDASAMA, M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill provides for delegation of Legislative powers in the following respects:

Clause 3.— This clause empowers the State Government to appoint by notification in the *Official Gazette*, a Special Authority.

Clause 5.— This clause empowers the State Government to determine the allowances to the Chairman and Members of the Special Authority.

Clause 6.— This clause empowers the State Government to approve the strength and other conditions of services of the Secretary and employes under the Special Authority.

Clause 8.— This clause empowers the State Government to frame the rules to carry out the objects of the Act.

The delegation of Lagislative powers are of normal character.

Dated the 22nd February, 2003 Gandhinagar.

DR. CHANDRIKABEN CHUDASAMA, M.L.A.

Gandhinagar,

D. M. PATEL,

Secretary,

Dated: 12th March, 2003.

Gujarat Legislative Assembly.

Government Central Press, Gandhinagar.

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PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 12th March, 2003 by Shri Dr. Chandrikaben Chudasama M.L.A. is published under rule 127-a of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 28 OF 2003.

THE GUJARAT MAINTENANCE OF PARENTS AND DEPENDANTS BILL, 2003.

A Bill

to provide for the maintenance of parents, wives and children and for matters connected therewith.

It is hereby enacted in the Fifty-fourth year of the Republic of India as follows:—

- 1. (1) This Act may be called the Gujarat Maintenance of Parents and Dependents Act, 2003.
 - (2) It shall come into force on such date as the State Government may, by Notification in the Official Gazette appoint.
- 2. In this Act, unless the context otherwise requires,-

Definitions.

- (a) "appellate authority" means an officer, not below the rank of a District Collector, authorised by the State Government to hear the appeals under section 16 of this Act.
- (b) "applicant" includes a person in whose favour a maintenance order has been made under the provisions of this Act;
- (c) "approved person or organisation" means a person or an organisation that has been approved under section 20 by the State Government in writing for the purposes of this act;
- (d) "child" includes an illegitimate, adopted and step child;
- (e) "dependant" includes-
 - (i) Parents and grand parents, so long as they are unable to maintain themselves or unable to obtain maintenance in the case of grand parents from their sons and daughters;
 - (ii) wife, so long as the does not remarry

V- Ex.-28-1

*28-*1

Short title, and

commence ment.

- (iii) son or the son of pre-deceased son, so long as he is minor; provided and to the extent that he is unable to obtain maintenance, in the case of grand-son from his father's or mother's estate;
- (iv) unmarried daughter or unmarried daughter of the pre-deceased son, so long as she remains unmarried; provided and to the extent that she is unable to obtain maintenance in case of a grand daughter from her father's and mother's estate;
- (ν) widowed daughter; provided that and to the extent that she is unable to obtain maintenance—
 - (a) from the estate of her husband;
 - (b) from her son or daughter, if any, or his or her estate; or
 - (c) from her father-in-law or her grand father or the estate of either of them;
- (vi) any widow of the son or of the son of the pre-deceased son, so long as she does not remarry; provided and to the extent that she is unable to obtain maintenance from the estate of her husband or from her son or daughter; if any, or his or her estate; or in the case of a grandson's widow, also from her father-inlaw's estate;
- (vii) minor illegitimate son, so long as he remains a minor;
- (viii) illegitimate daughter, so long as she remains unmarried;
- (f) "District Collector" means the Collector of the District appointed by the Government of Gujarat;
- (g) "Maintenance Officer" means the maintenance officer for the maintenance of Parents and Dependents apppointed under section 12:
- (h) "prescribed" means prescribed by rules made under this Act;
- "property" means property of any kind, whether movable or immovable, tangible; or intangible; and includes any rights or interest in such property;
- (j) "repondent" includes a person against whom a maintenance order has been made under the provisions of this Act;
- (k) "Tribunal" means the Tribunal for the maintenance of parents and dependents established under Section 13.

Application for maintenance orders.

- (1) Any person, who is unable to maintain himself and is resident of the State of Gujarat; may apply to the Tribunal for an order;
 - (i) in case of a parent or grand parent of or above 60 years of age, that one or more of his children or grand children;
 - (ii) in case of wife, that her husband;
 - (iii) in case of minor son or unmarried daughter, that his or her father and where father is dead his or her mother;
 - (iv) in case of dependent (other than a parent, grant parent, wife minor son or unmarried daughter) if such dependent has not obtained, by testamentary or intestate succession, any share in an estate of his ancestor, that the persons who take the share; pay him a monthly allowance or any other periodical payment or a lumpsum for his maintenance.
- (2) An approved person or organisation in whose caare a parent, wife, child or dependent resides may apply to the Tribunal for an order that the respondent pay the approved person or organisation a monthly

allowance or any other periodical payment or a lumpsum for the purpose of defraying the costs and expenses of maintaining that parent, wife, child or a dependent, as the case may be.

- (3) Where a parent, wife, child or dependent ceases to be in the care of the approved person or organisation any part of the monthly allowance, other periodicial payment or lumpsum remaining, after deducting the reasonable cost and expenses of maintaining such parent, wife, child and the dependent shall be held in trust for such parent, wife, child and the dependent, as the case may be
- Notwithstanding that a person is below the minimum age specified in sub-section (1), this Act shall apply to that person if the Tribunal is satisfied that he is suffering from informity of mind or body which prevents him from maintaining or makes it difficult for him to maintain himself or that there is any other special reason.

Explanation.—For the purposes of this section, a parent shall be deemed to maintain himself if his total or expected income and other financial resources are inadequate to provide him with basic amenities and basic physical needs including (but not limited to) shelter, food and clothing.

A repondent may serve notice in the prescribed from on other persons liable to maintain the applicant joining them as respondents in the action. Joinder of respondents.

Maintenance Order.

- The Tribunal may make a maintenance order if it consider that it is just and equitable that the respondent should maintain the applicant and that
 - the respondent is able to provide maintenance to the applicant (a) after his own requirements and of his spouse and his children have been supplied; and
 - the applicant is unable, inspite of efforts on his part, to maintain himself through work or from his property or from any other
 - When ordering maintenance for the benefit of wife, child or aged or infirm parents, the Tribunal shall have regard to all the circumstances of the case including (but not limitd to) the following matters:
 - the financial needs of the applicant, taking into account reasonable expenses for housing and medical costs;
 - (b) the income, earning capacity, property and other financial resources of the applicant and the manner in which an applicant has spent his saving or dissipated his financial resources;
 - (c) any physical or mental disability of the applicant;
 - (d) the income, earning capacity, peoperty and other financial resources of the respondent;
 - the expenses incurred by the respondent in supporting his spouse or children:
 - the contributions and provisions, whether financial or otherwise, **(f)** which the respondent has made for the maintenance of the applicant;
 - (g) if the applicant is living separately, whether the applicant is ; justified in doing so.
 - (3) When ordering maintenance, if any, for the benefit to a dependant (other than wife, minor son, unmarried daughter and parents) regard shall be had to :
 - the net value of the estate of the deceased after providing for the payment of debts;

- (b) the provisions, if any, made under a will of the deceased in respect of the dependent;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependent;
- (e) the past relations between the dependent and the deceased;
- (f) the value of the property of the dependent and any income derived from the property or from his or her earning or from any other source;
- (g) the number of dependents entitled to maintenance under this Act.
- (4) Where there is more than one respondent the Tribunal may apportion the maintenance among the various respondents in such manner as may be just.
- (5) The Tribunal shall, before hearing an application under this section, refer the differences between the parties to a conciliation officer for mediation between the parties.

Power of Tribunal to order security for maintenance.

- (I) A maintenance order may provede for the payment of lumpsum, or a monthly allowance or periodical payment for such period as the Tribunal may determine.
 - (2) The Tribunal may, in its discretion, when awarding maintence, order the respondent to secure the whole or any part of it by vesting any property in trustees upon trust to pay the maintence or part thereof out of the income from that property.
 - (3) The Tribunal may, in awarding maintence, order the applicant to-
 - (a) deposit such minimum sum as the Tribunal may determine with a bank or
 - (b) purchage an annuity with an insurer with such minimum sum.
 - (4) The Tribunal may, in awarding maintence, give directions as to the manner or method of payment.

Duration of orders for maintenance.

- (1) Except where an order for maintence is expressed to be for any shorter period or where any such order has been rescinded, a maintenance order shall expire—
 - (a) if the maintenance was unsecured, on the death of the applicant or the respondent, whichever is the earlier;
 - (b) if the maintenance was secured, on the death of the applicant.
 - (2) Where a maintenance order was made against more than one respondent, the death of a respondent does not affect the liability of the others to continue paying maintenance to the applicant. The applicant may apply to the Tribunal to re-apportion the liability among the surviving respondents.

Power of Tribunal to vary orders for maintenance.

- (1) The Tribunal may very or rescind any subsisting order for maintenance, whether secured or unsecured, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances of the applicant or respondents or where another person is joined as a respondent.
- (2) An application for variation of a maintenance order may be made by-
 - (a) the applicant:
 - (b) a respondent;
 - (c) the Maintenance Officer;
 - (d) an approved person organisation referred to in section 3(2); or
 - (e) in respect of secured maintenance, the legal personal representative of a respondent.

1

- (3) Where a maintenance order was made against more than one respondent or another respondent is joined, the Tribunal may reapportion the maintenance upon an application to vary the maintenance order in such manner as it considers just.
- 9. Maintenance payable to any person under this Act shall not be assignable or transferable or liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim whatsoever.

Maintenance payable under order of Tribunal to be in alienable.

2 of 1974.

10. (1) A Maintenance order made under this Act, shall have be same force and affect as an order passed under Chapter IX of the Code of Criminal Procedure, 1973, and shall be executed in the manner prescribed for the execution of such order by the code.

Enforcement of maintenance orders.

- (2) An order for maintenance may be executed either by the Tribunal which passed it or by other Tribunal or Ordinary Court to which it is sent for execution.
- (3) In addition to the mode of excution of orders referred to in sub-sections (1) and (2), a maintenance orders passed against a person, who is in receipt of salary from any State or Central Government, or from a local authority or from a Corporation engaged in any trade or industry which is established by a Central or State Government, or from a Government Company as defined in section 617 of the Companies act, 1956, may be executed by way of attachment of salary payable to him.

1 of 1956.

- (4) Where the salary is attached under sub-section (3), the Tribunal, whether the person liable to pay the amount of maintenance, or the employer or the officer disbursing the salary is or is not within the local limits of the Tribunal's jurisdiction may order that the salary not exceeding 1/3 shall be withheld from such salary by monthly instalments as the Tribunal may direct and upon notice of the order such employer or the disbursing officer, shall remit to the Tribunal the amount of the monthly instalments.
- (5) Where the attachable portion of such salary is already being with held and remitted to a court or a Tribunal in pursuance of a previous and unsatisfied order of attachment, the employer or the disbursing officer shall forth with return the subsequent order to the Tribunal issuing it with a full statement of all the particulars of the existing attachment.
- (6) Every order made under sub-section (3) unless it is returned in accordance with the provisions of sub-section (5), shall without further notice or other process, bind the employer and the employer shall be liable for the sum paid in contravention of the provisions of sub-section (3), (4) and (5) of this section.
- 11. Where an applicant is unable to make an application under this Act, (whether by reason of physical or mental infirmity or for any other reason), such application may be made on his behalf by—
 - (a) any member of his family;
 - (b) any person in whose care he resides; or
 - (c) any other person whom the applicant has authorised to make such application.
- 12. (1) The State Government may appoint a maintenance Officer for the maintenance of Parents and Depandants on such terms and conditions as the State Government may determine.

Applications on behalf of incapacitated applicants.

Appointment of Maintenance of Officer.

- (2) The maintenance officer may make an application under this Act on behalf of an applicant of or above 60 years of age or a minor child (whether of not the applicant is able to do so) or represent such applicant in any proceeding or appeal under this Act.
- (3) The maintenance officer may consult or direct any of his officers to consult, with the parties concerned in order to assist them to reach agreement by conciliation.
- (4) Notwithstanding that a person is below the minimum age specified in sub-section (2), the Maintenance Officer may, in his disrection make and application on his behalf or represent him if the Maintenance Officer is satisfied that he is suffering from infirmity of mind or body which prevents him from maintaining or makes it dificult for him to maintain himself or if there is any other special reason.

Establishment
of Tribunal
for
Maintenance
of Parents
and
Depandants.

- 13. (1) For the purpose of exercising the jurisdication and powers conferred on a tribunal for maintenance of Parents and Depandants by this Act, Government shall, as soon as may be after the commencement of this Act, establish, in every district, as many Tribunal for Maintenance of Parents and Depandants and at such places, as the State Government may by notification specify:
 - (2) The President Officers of such Tribunal, who shall not be a lower in rank of the Deputy Collector or Mamalatdar shall be appointed by the State Government.
 - (3) The Presiding Officer of the Tribunal shall vacate his office where-
 - (a) he resigns; or
 - (b) Where he has been appointed by virtue of holding any officer, he ceases to hold that officer;
 - (4) Where a person ceases to be the Presiding officer of the Tribunal, the State Government shall, as soon as is reasonably practicable, take steps to fill the vacancy but the existence of any vacancy in the tribunal shall not invalidate the acts of the tribunal.
 - (5) If the presiding officer of the tribunal is for the time being unable to perform the duties of his office either generally or in relation to any particular proceedings the State Government may appoint some other person to discharge the duties of the Presiding officeer for any period, not exceeding six months at one time or as the case may be, in relation to those proceeding; and a person so appointed shall, during that period or in relation to those proceedings, have the same powers as the person in whose place he is appointed.
 - (6) The presiding officer of the Tribunal when and so long as he is serving on the Tribunal shall be deemed to be a public servent within the meaning of the Indian Penal Code and the proceedings of the Tribunal shall be deemed to be judicial proceedings.

45 of 1860.

- Tribunal to hear and determine claims.
- 14. (1) The Tribunal shall have jurisdication to hear and determine in accordance with this Acts all applications made under this Acts.
 - (2) The Tribunal shall deside every application made to it expeditiously as possible and ordinarily every application shall be desided with in a period of six months reckoned from the date on which such application has been made.
 - (3) Sittings of the Tribunal shall be held at such places and times as the Presiding officer of the Tribunal may determine.

- (4) Any interested party may be represented before the Tribunal-
 - (a) by an agent acting without fee, gain, reward or any expectation thereof, in any case in which the tribunal may, at the request of that party and for good reason, permit,
 - (b) by the Maintenance Officer;
 - (c) by an approved person or organisation through any of its employees or office holders.
- (5) No party to any proceedings before the tribunal may be represented by an Advocate.
- (6) Every summons and notice issued under the hand of the Presiding Officer of the tribunal to any person shall be served on that person-
 - (a) by delivering the summons to the person or to some adult member of his family at his last known place of residence-
 - (b) by leaving the summons at his usual or last known place of residence or business in an envelop addressed to the person;
 - (c) by sending the summons by registered post addressed to the person at his usual or last known place of residence or business; or
 - (d) Where the person is a body of persons or a Company—
 - by delivering the summons to the Secretary or other like officer of the body of persons or company at its registered officer or principal place of business; or
 - (ii) by sending the summons by registered post addressed to the body of persons of company at its registered office or principal place of business.
- (7) Any summons or notice sent by registered post to any person in accordance with sub-section (6) shall be deemed to be duly served on the person to whom the letter is addressed at the time when the letter would in the ordinary course of post be delivered and in proving service of the summons, it shall be sufficient to prove that the envelop containing the summons was properly addressed, stamped and posted by registered post.
- (8) The Tribunal shall have the following powers:
 - (a) to dismiss frivolous or vexatious claims at a preliminary stage on the basis on the affidavits and other documentary evidence;
 - (b) to summon any person to appear before a Conciliation Officer for the pupose of mediation;
 - (c) to summon any person whom it may consider able to give evidence to attend at the hearing of an application;
 - (d) to examine such person as a witness either on oath or otherwise and to require such person to produce such records, documents or articles as the Tribunal may think necessary for the purposes of the proceedings;
 - (e) to allow any person, attending the proceedings any reasonable expenses necessarily incurred by him in so attending to be paid by such party as the Tribunal may determine;
 - (f) to make an order by consent of the parties, and
 - (g) all the powers of a Magistrate with regard to the enforcement of attendance of witnesses and hearing evidence on oath.
- (9) Every person examined as a witness by or before the Tribunal whether on oath or otherwise, shall be legally bound to state the truth and to produce such records, documents or articles as the Tribunal may require.



1 of 1872.

(10) The Tribunal may receive as evidence any report, statement, document, information or a matter that may, in its opinion, assist it to deal effectively with a dispute, whether or not the same would be otherwise relevent or admissible under the Indian Evidence Act, 1872.

(11) In proceedings before the Tribunal it shall not be necessary to record the evidence of witnesses at length, but the Tribunal, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of the substance of what a witness desposes, and such memorandum shall be signed by the witness and the Presiding Officer of the Tribunal and shall form part of the record.

- (12) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all exception; be read in evidence in any proceeding before the Tribunal.
- (13) The Tribunal may, if it thinks fit, and shall on the application of any of the parties to the proceedings summon and examine any such person as to the facts contained in his affidavit.

Appellate
Authority
may call for
proceedings
of the
Tribunal.

- 15. (1) The Appellate Authority either on its own motion or on the application within 14 days of any party aggrieved by a decision of the Tribunal on the ground that it is wrong in law, may call for the proceedings and the grounds of the award and give such order thereon, either by directing a fresh hearing or otherwise, as seems necessary to secure that substantial justice is done.
 - (2) The powers of revision conferred under this section shall not question the decision of the Tribunal as to the quantum of maintenance awarded or apportioned under this Act.

Appeals.

16.

- (1) Except as provided in this section and section 15, of the decision of the Tribunal shall be final.
- (2) The applicant, the Maintenance Officer on behalf of the applicant, a respondent, an approved person or organisation, or any affected party may appeal to the Appellate authority appointed by the State Government in this behalf from the decision of the Tribunal upon any question of law or of mixed law and fact except in any case where the Tribunal has made the order with the consent of the parties unless it is alleged that the consent was obtained by means of fraud, duress, threat or misrepresentation.
- (3) The Appellate Authority shall decide every appeal preferred to it as expeditiously as possible and ordinarily every appeal shall be decided within a period of three months reckoned from the date on which such appeal is preferred.
- (4) The procedure governing such appeals under sub-section (2) and (3) shall be the same as that for appeals from decisions of the District Court to the High Court.
- (5) The Appellate Authority shall have jurisdiction to hear and determine any such appeal and may confirm, vary or annul the decision of the Tribunal on appeal and make such further or other order on such appeal, whether as to costs or otherwise, as the Appeallate Authority may consider fit.
- (6) There shall be no further right to appeal from decision of the Appellate Authority.

17. The Costs of:

- (a) an application under this Act shall be in the discretion of the Tribunal:
- (b) an appeal shall be in the discretion of the appellate Authority hearing the appeal.

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Costs

PART V1

GUJÁRAT GOVERNMENT GAZETTE EX., 12-3-2003

8. (1) Where any person, who, after the commencement of this Act, has transferred, by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferer and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of the property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferer be void

Effect of transfer of property on right of maintenance.

- (2). Where any person has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transfer if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.
- 19. The State Government may approve—

(a) institutions or organisations engaged in social welfare or the representatives thereof;

(b) persons professionally engaged in promoting the welfare of the family;

(c) persons working in the field of social welfare; and

a suit or proceeding for maintenance.

(d) any other persons;

whose association with a Tribunal would enable it to exercise its jurisdiction more effectively in accordance with the purpose of this Act.

20. The provisions of this Act shall be in addition to and not in derogation of the provisions of Chapter IX (relating to the order of maintenance of wife children and parents) of the Code of Criminal Procedure, 1973 and the provisions of any law for the time being in force in respect of

Provisions not to be derogatory to certain laws.

Approved

person or

organisations.

21. (1) The State Government may, subject to the condition of previous publication in the Official Gazette make rules for the purpose of carrying into effect the provisions of this Act.

Power to make rules.

- (2) Without prejudice to the generality of the foregoing powers, such rules may provide for—
 - (a) regulating and prescribing the procedure to be followed for applications and the conduct of proceedings under this Act;
 - (b) regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given including but not limited to affidavits:
 - (c) the manner in which frivolous or vexatious claims may be dismissed at a preliminary stage on the basis of the affidavits and other documentary evidence;
 - (d) the discovery of documents and other evidence and public records:
 - (e) the manner and method of payment of maintenance awarded under this Act;
 - (f) the costs of any proceedings under this Act; and
 - (g) the manner in which, the purposes for which and conditions subject to which, institutions, organisations and other persons may be a approved for providing assistance to the Tribunal.

(3) Every rule made under this section by the State Government shall be laid, as soon as may be after it is made, before the State Legislative Assembly, while it is in session, for a total period of fourteen days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, the Assembly agrees in making any modifications in the rule or the Assembly agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of on effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule

STATEMENT OF OBJECTS AND REASONS

In our society the maintenance of aged parents has been a matter of great concern and of personal obligation arising from the existence of the relationship and quite independent of the possession of any property, ancestral or acquired. Our ancient seers held this obligation on the higher pedestral by declaring that "the aged mother and father, the chaste wife and infant child must be maintained even by doing a hundred misdeeds." Recently the fathers of our Constitution, through Directive Principles of the State policy, contained in article 38 and 41, together with other provisions, have wisely laid down the main objective, namely, the building of a welfare State and egaliterian social order by making effective provisions for securing public assistance in case of old age, sickness and disablement and in other cases of undeserved want.

In the developing age of science and technology our old virtues are giving way to materialistic and separatistic tendencies. Younger generation is neglecting their wives, children and aged and infirm parents, who are now being left beggared and destituted on the scarpheap of society and thereby driven to a life of vagrancy immorality and crime for their subsistance. Thus it has become necessary to provide compassionate and speedy remedy to ameliorate the difficulties being faced by the neglected wives, children, aged and infirm parents.

This Bill seeks to achieve the aforesaid objectives.

Gandhinagar, Dated the 22nd February, 2003. Dr. CHANDRIKABEN CHUDASAMA, M.L.A.

FINANCIAL MEMORANDUM

Clause 12 and 13 of the Bill seek to provide for the appointment of the Maintenance Officer and tribunal for the Maintenance of Parents and Dependants, Since the existing Government machinery is intended to be utilized for the implementation of the proposed provision, there will be no additional expenditure on the establishment. Tentatively speaking, the provisions contained in the Bill when enacted will involve approximately extra recurring expenditure out of the State exchequer to the tune of rupees 5 lakhs per annum.

Gandhinagar,
Dated the 22nd February, 2003.

Dr. CHANDRIKABEN CHUDASAMA, M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (2) of Clause (1) empowers the State Government to appoint, by notification in the Official Gazete, the date on which the Act shall come into force.

Clause 12 of the Bill empowers the state Government to appoint Maintenance Officer and to determine the terms and Conditions for their appointments.

Clause 13 of the Bill empowers the State Government to establish in every district at such places and as many Tribunals for Maintenance of Parents and Dependents as the State Government may specify by notification.

Clause 21 empowers the State Government to make rules in respect of the purposes mentioned therein and for the purpose of carrying out all or any of the provisions of the Bill. These rules shall as soon as may after they are made be laid before the Legislative Assembly. This delegation is essential and normal in character.

Gandhinagar, Dated the 22nd February, 2003. Dr. CHANDRIKABEN CHUDASAMA, M.L.A.

Gandhinagar,

Dated: 12th March, 2003.

D. M. PATEL,
Secretary,
Gujarat Legislative Assembly

Government Central Press, Gandhinagar.





The Gujarat Covernment Gazette EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XLIV]

. WEDNESDAY, MARCH, 12 2003/PHALGUNA 21, 1924

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 12th March, 2003 by Shri Kalubhai Virani M.L.A. is published under rule 127-a of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 29 OF 2003.

THE BOMBAY PREVENTION OF FRAGMENTATION AND CONSOLIDATION OF HOLDINGS (GUJARAT AMENDMENT) BILL, 2003.

A BILL

further to amend the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 in its application to the State of Gujarat

It is hereby enacted in the Fifty fourth year of the Republic of India as follows: -

- (1) This Act may be called the Bombay Prevention of Fragmentation and Consolidation of Holdings (Gujarat Amendment) Act, 2003.
 - (2) It extends to the whole of the State of Gujarat.
 - (3) It shall come into force at once.

Short title, extent & commen -cement.

Bom. LXII of 1947.

- In the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, in Section 31 -
 - (1) in sub-section (1), in clause (b), for the words "with the permission in writing of the Collector" the words "on the ground of providing share to the successor-in-interest" shall be substituted.
 - (2) in sub-section (2), in clause (a), the words "and does not create any fragment" shall be deleted.

ment of Section 31 of Bombay LXII of 1947.

Amend-

V- Ex.-29-1

STATEMENT OF OBJECTS AND REASONS

It is prohibited to transfer the land of any block as per provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. It is noticed that after the fixation of the block, the owner of the land in such block cannot transfer or sub-divide the land in favour of his successor-in-interest, without the permission of the Collector. During the passage of time it is noticed that the Collector neither gives such permission, for years together nor makes any entry in the records of land. In order to alleviate such hardship it is proposed to amend the said Act,. The Bill, therefore seeks to achieve the aforesaid object.

GANDHINAGAR,

Dated the 28th February, 2003.

Gandhinagar,

Dated: 12th March, 2003.

Kalubhai Virani, M.L.A.

D. M. PATEL,
Secretary,
Gujarat Legislative Assembly.

Government Central Press, Gandhinagar.





The Gujarat Covernment Gazette EXTRAORDINARY

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MONDAY MARCH 17, 2003/ PHALGUNA 26, 1924

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART-V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT CONTROL OF ORGANISED CRIME BILL, 2003.

GUJARAT BILL NO. 30 OF 2003. A BILL

to make special provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang, and for matters connected therewith or incidental thereto.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act, may be called the Gujarat Control of Organised Crime Act, 2003.

Short title, extent and commencement.

(2) It extends to the whole of the State of Gujarat.

VEx 30-1

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Definitions.

- 2. (1) In this Act, unless the context otherwise requires,--
- (a) "abet" with its grammatical variations and cognate expressions, includes -
 - (i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner an organised crime syndicate;
 - (ii) the passing on or publication of without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of, any document or matter obtained from the organised crime syndicate; and
 - (iii) the rendering of any assistance, whether financial or otherwise, to the organised crime syndicate;
- (b) "Code" means the Code of Criminal Procedure, 1973;

2 of 1974.

- (c) "Competent Authority" means the Competent Authority appointed under section 15;
- (d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence;
- (e) "organised crime" means any continuing unlawful activity including extortion, land grabbing, contract killing or ransom by an individual, singly or jointly either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion or other unlawful means or engaging any individual or any member of such a syndicate by any person for pecuniary consideration, with the object of gaining pecuniary benefits or

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gaining undue economic or other advantage for himself or for the organised crime syndicate;

- (f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulged in activities of organised crime;
- (g) "Special Court" means the Special Court constituted under section 5.
- (2) Words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

CHAPTER II

PUNISHMENT

- 3. (1) Whoever commits an offence of organised crime shall,-
- Punishment for organised crime.
- if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine which shall not be less than rupees ten lakhs;
- (ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs.
- (2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs.
- (3) Whoever harbours or conceals or attempts to harbour or conceal any member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs.

- (4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs.
- (5) Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees two lakhs.

Punishment for possessing unaccountable property on behalf of member of organised crime syndicate.

4. If any person on behalf of a member of an organised crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than rupees one lakh and such property shall also be liable for attachment and forfeiture, as provided by section 29.

CHAPTER III

SPECIAL COURTS

Special Court.

- 5. (1) The State Government may, with the concurrence of the Chief Justice of the High Court of Gujarat, by notification in the *Official Gazette*, constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.
- (2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the State Government whose decision in the matter shall be final.
- (3) A Special Court shall be presided over by a judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court of Gujarat.
- (4) The State Government may also appoint, with the concurrence of the Chief Justice of the High Court of Gujarat, additional judges to exercise jurisdiction of the Special Court.

- (5) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he immediately before such appointment, is a sessions judge or an additional sessions judge, respectively.
- (6) Where any additional judge or additional judges are appointed in Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of the business of the Special Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.
- 6. Notwithstanding anything contained in the Code, every offence punishable under this Act shall be triable only by the Special Court within whose local jurisdiction it was committed or, as the case may be, by the Special Court constituted for trying such offence under sub-section (1) of section 5.

Jurisdiction of Special Court.

7. (1) When trying any offence punishable under this Act, a Special Court may also try any other offence with which the accused may under the Code, be charged at the same trial if the offence is connected with such other offence.

Power of Special Court, with respect to ther offence.

- (2) If, in the course of any trial of any offence under this Act, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law.
- 8. (1) The State Government shall appoint, for every Special Court, a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor and may also appoint for any case or class or group of cases, a Special Public Prosecutor.

Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor, Additional Public Prosecutor or Special Public Prosecutor unless he has been in practice as an Advocate for a period of not less than ten years.

(3) Every person appointed as a Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor under this section shall be deemed to be a 'Public Prosecutor' within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Procedure and powers of Special Court.

- 9. (1) Subject to the provisions of section 33, a Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.
- (2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code shall, as far as may be, apply to such trial:

Provided that where in the course, of summary trial under this sub-section it appears to the Special Court that the nature of the case is such that it is undesirable to try in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to, a Special Court as they apply to and in relation to, a Magistrate:

Provided further that in case of any conviction in summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) Subject to other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be, in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

Trial by Special Court to have precedence. 10. The trial of any offence by a Special Court under this Act shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference of the trial of such other case and accordingly the trial of such other cases in any other court shall remain in abeyance.

11. Where, after taking cognizance of an offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to the Court having jurisdiction under the Code, and the court to which the case is transferred shall proceed with the trial of the offence as if it had taken cognizance of the offence.

Power to transfer cases to regular courts.

12. (1) The jurisdiction conferred by this Act on a Special Court, shall, until a Special Court is constituted under section 5, in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Act.

Transitional provisions and transfer of pending proceedings.

- (2) On and from the date when the Special Court is constituted under section 5, every trial under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that court on the date on which it is constituted.
- 13. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgement, sentence or order, not being an interlocutory order, of a special court to the High Court.

Appeal.

(2) Every appeal under sub-section (1) shall be preferred within thirty days from the date of receipt of the judgement, sentence or order by the accused.

36 of 1963.

(3) In computing the period of limitation, the provisions of sections 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply.

CHAPTER IV

INTERCEPTION OF COMMUNICATION IN CERTAIN CASES

14. In this Chapter, unless the context otherwise requires,-

Definitions.

(a) 'electronic communication' means any transmission of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, satellite, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include ---

- (i) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit;
- (ii) any wire or oral communication;
- (iii) any communication made through a tone only paging device; or
- (iv) any communication from a tracking devices;
- (b) 'intercept' means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device;
- (c) 'oral communication' means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication;
- (d) 'wire communication' means any aural transmission made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication.

Appointment of Competent Authority.

15. The State Government shall appoint an officer of the Home Department, not below the rank of Secretary to Government, to be the Competent Authority for the purposes of section 16.

Application for authorisation of interception of wire, electronic or oral communication. 16. (1) A police officer not below the rank of Superintendent of Police supervising the investigation of an organised crime under this Act may submit an application in writing to the Competent Authority for an order authorizing or approving the interception of wire, electronic or oral communication by the investigating officer when he believes that such interception may provide or has provided evidence of any offence involving an organised crime.

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- (2) Each such application shall include the following information, namely:-
 - (a) the identity of the investigating officer making the application, and the head of the department authorising the application;
 - (b) a statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including-
 - (i) details as to the offence of organised crime that has been, is being, or is about to be committed;
 - (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
 - (iii) a particular description of the type of communication sought to be intercepted;
 and
 - (iv) the identity of the person, if known, committing the offence of organised crime whose communications are to be intercepted;
 - (c) a statement as to whether or not other modes of inquiry or intelligence gathering have been tried and failed or the reasons not likely to succeed, if tried or to be dangerous or is likely to expose the identity of the persons connected with the operation of interception;
 - (d) a statement of the period of time for which the interception is required to be maintained, if the nature of the inquiry is such that the authorisation for interception should not automatically terminate after the described type of communication has been first obtained;
 - (e) a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;
 - (f) a statement of the facts of all previous applications made to the Competent Authority for authorisation to intercept, or for approval of interceptions of wire,

electronic or oral communications involving any of the same persons, facilities or places specified in the application and the action taken by the Competent Authority on each such application; and

- (g) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.
- (3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

Decision of the Competent Authority on application for interception.

- 17. (1) Upon receipt of an application under section 16, the Competent Authority may, after recording the reasons in writing, reject the application, or issue an order, as requested or as modified, authorising or approving interception of wire, electronic or oral communications, if the Competent Authority determines on the basis of the facts submitted by the applicant that -
- (a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence described and made punishable under sections 3 and 4;
- (b) there is a probable cause for belief that particular communications concerning that offence may be obtained through such interception;
- (c) the normal modes of inquiry and intelligence gathering have been tried and have failed or reasonably appear not likely to succeed, if tried or to be dangerous or is likely to expose the identity of the persons connected with the operation of interception;
- (d) there is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used or are about to be used, in connection with the commission of such offence, leased to, or are listed in the name of or commonly used by such person.

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- (2) Each order of the Competent Authority authorising or approving the interception of any wire, electronic or oral communication under this section shall specify—
 - (a) the identity of the person, if known, whose communications are to be intercepted;
 - (b) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;
 - (c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;
 - (d) the identity of the agency authorised to intercept the communications, and of the person authorising the application, and
 - (e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate after the described communication has been first obtained.
- 18. (1) The Competent Authority shall immediately after passing of the order under sub-section (1) of section 17, but in any case not later than seven days from the passing of the order, submit a copy of the same to the Review Committee constituted under section 24 alongwith all the relevant underlying papers, record and his own findings, in respect of the said order, for consideration and approval of the order by the Review Committee.

Submission of order of interception to Review Committee.

- (2) An order under section 17 authorising the interception of wire, electronic or oral communication shall, upon request of the applicant, direct that a provider of wire or electronic communication service, the landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian or person is providing to the person whose communications are to be intercepted.
- 19. (1) No order issued under section 17 may authorise or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorisation, nor in any event longer than

Duration of order of interception, etc.

sixty days and such sixty days period shall begin on the day immediately preceding the day on which the Investigating Officer first begins to conduct an interception under the order or ten days after the order is issued, whichever is earlier.

- (2) Upon an application for an extension is made in accordance with sub-section (2) of section 16, the Competent Authority shall determine his findings in accordance with the provisions of sub-section (1) of section 17 and may grant the extension of the order. The period of extension so granted shall be no longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for longer than sixty days at a time.
- (3) Every order of interception and extension thereof shall contain a provision that the authorisation to intercept shall be executed as soon as practicable and shall be conducted in such manner as to minimize the interception of communications and must terminate upon attainment of the authorised objective, or in any event on expiry of the period of said order or extension thereof.
- (4) In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimisation may be accomplished as soon as practicable after such interception.

Authority competent to carry out interception.

- 20. (1) An interception under this Act may be conducted in whole or in part by public servant, or by an individual operating under a contract with the State Government, acting under the supervision of the Investigating Officer authorised to conduct the interception.
- (2) Whenever an order authorising interception is issued under section 17, such order may provide requiring the Investigating Officer to make report to the Competent Authority showing the progress which has been made towards achievement of the authorised objective and the need for continued interception and such report shall be made at such intervals as the Competent Authority may require.

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21. (1) Notwithstanding anything contained in any other provision of this Act, an officer not below the rank of Director General of Police who reasonably determines that –

Interception of communication in emergency.

- (a) an emergency situation exists that involves
 - (i) immediate danger of death or serious physical injury to any person;
 - (ii) conspiratorial activities threatening the security or interest of the State; or
 - (iii) conspiratorial activities characteristic of organized crime that requires a wire electronic or oral communication to be intercepted before an order from the Competent Authority authorizing such interception can, with due diligence, be obtained, and
- (b) there are grounds upon which an order should be issued immediately to authorise such interception,

may authorise, in writing, the police officer not below the rank of Superintendent of Police to intercept such wire, electronic or oral communication.

- (2) For obtaining the authorisation under sub-section (1), the police officer, not below the rank of Superintendent of Police, shall submit an application to the Director General of Police in accordance with the provisions of section 16.
- (3) The Director General of Police shall forthwith submit his order made under sub-section (1) to the Competent Authority.
- (4) The Competent Authority shall, within forty-eight hours from the receipt of an order made under sub-section (1), either approve the interception or may reject the application for permitting the interception.
- (5) Where the Competent Authority rejects the application for permitting the interception, any such interception shall immediately be terminated.

Protection of information collected.

- 22. (1) (a) The contents of any wire, electronic or oral communication intercepted by any means authorized by section 17 shall, as far as possible, be recorded on tape or wire or other comparable device and shall be done in such manner so as to protect the recording from editing or other alterations;
- (b) immediately upon the expiration of the period of order of interception or extension thereof, such recordings shall be made available to the Competent Authority and shall be sealed under his directions and kept in the custody of such person or authority as the Competent Authority orders, and such recording shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years;
- (c) applications made under section 16 and orders issued under section 17 shall be sealed by the Competent Authority and the custody of such applications and orders shall be kept in such manner as the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years.
- (2) The Competent Authority, upon request being made in this behalf, by the person concerned may, in his discretion, make available to such person or his Counsel for inspection such portions of the intercepted communications, applications and orders as the Competent Authority determines to be in the interest of justice.

Admissibility of evidence collected through interception.

23. Notwithstanding anything contained in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of this Act shall be admissible as evidence against the accused in the court during the trial of a case:

Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished, not less than ten days before trial, hearing or proceeding, with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved:

Provided further that the period of ten days may be waived by the judge trying the offence, if he comes to the conclusion that it was not possible to furnish the accused with the aforesaid information ten days before the trial, hearing or proceeding and that the accused may not be prejudiced by the delay in receiving such information.

(1) There shall be a Review Committee to review every Constitution of 24. order passed by the Competent Authority under section 17 approving the application for interception.

Committee and its powers.

- The Review Committee shall consist of the following ex-officio members, namely:---
- Chief Secretary to the Government of Gujarat Chairman. (i)
- one Additional Chief Secretary or Principal Member (ii) Secretary to Government, to be appointed by the State Government.
- (iii) Secretary and Remembrancer of Legal Affairs, Member Legal Department, Government of Gujarat.
- Every order passed by the Competent Authority under section 17 approving the application for interception shall be placed before the Review Committee which shall be considered by the Review Committee within ten days after its receipt, to decide, whether such order passed by the Competent Authority was necessary, reasonable and justified.
- The Review Committee, after examining the entire record and holding such inquiry, if any, deemed necessary may, by order in writing, either approve the order passed by the Competent Authority or may issue order disapproving the same.
- On issue of an order of disapproval by the Review Committee under sub-section (4), the interception, if any, already commenced, shall be forthwith discontinued and the intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.
- Except as otherwise specifically provided in section 17, any Interception and 25. police officer who -

disclosure of wire, electronic or oral communications prohibited.

- (a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;
- (b) intentionally uses, endeavours to use, or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when ---
 - (i) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication, or
 - (ii) such device transmits communications by radio, or interferes with the transmission of such communication;
- (c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of provisions of this Act;
- (d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of provisions of this Act; or
- (e) intentionally discloses, or endeavours to disclose, to any other unauthorised person the contents of any wire, electronic or oral communication intercepted by means authorised by section 17; or the information obtained through the interception of such a communication in connection with the criminal investigation under the provisions of this Act;
- (f) obstruct, impede, or interfere with a duly authorised investigation under the provisions of this Act, or
- (g) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of rejection of application by the Competent Authority under sub-section
 (1) of section 17 or under sub-section (4) of section 21 or an

order of disapproval by the Review Committee under sub-section (4) of section 24,

shall, for such violation, be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which shall not be less than rupees one lakh.

1 of 1872.

26. (1) Notwithstanding anything contained in the Code or the Indian Evidence Act, 1872, for the purposes of trial and punishment for offences under this Act or connected offences, the court may take into consideration as having probative value, the fact that the accused was,——

Special rules of evidence.

- (a) on any previous occasion executed bond under section 107 or section 110 of the Code;
- (b) detained and convicted under any law relating to preventive detention; or
- (c) on any previous occasion prosecuted under the provisions of this Act.
- (2) Where it is proved that any person involved in an organised crime or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his illegal activities.
- (3) Where it is proved that the accused has kidnapped or abducted any person, the Special Court shall presume that it was for ransom.

1 of 1872.

27. (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 but subject to the provisions of this section, a confession made by a person before a police officer not below the reak of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such accused, co-accused, abettor or conspirator for an offence under the provisions of this Act:

Certain
confessions
made to police
officer to be
taken into
consideration.

Provided that the co-accused, abettor or conspirator is charge-sheeted and tried in the same case together with the accused.

- (2) The confession under sub-section (1) shall be recorded in the atmosphere free from threat and inducement and shall be in the same language in which the person makes it.
- (3) The police officer shall, before recording any confession by the person under sub-section (1), explain to such person that he is not bound to make a confession and that, if he does so, it may be used as evidence against him:

Provided that such police officer shall not record any such confession unless, upon questioning the person making it, he is satisfied that the confession is being made voluntarily.

- (4) The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of the confession and mention the date and time of the same.
- (5) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.
- (6) The person from whom a confession has been recorded under sub-section (1) shall be produced, within forty-eight hours, before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (5), alongwith the original statement of confession, written or recorded on mechanical or electronic device.
- (7) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall, record the statement, if any, made by the accused so produced and get his signature or thumb impression and if there is any complaint of torture, the accused shall be directed to be produced for medical examination before a Medical Officer not lower in rank then of an Assistant Civil Surgeon.

Protection of witnesses.

- 28. (1) Notwithstanding anything contained in the Code, the proceedings under this Act may be held in camera, if the Special Court so desires.
- (2) A Special Court, on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to

such witness or on its own motion, is satisfied that life of such witness is in danger, it may take such measures as it deems fit for keeping secret the identity and address of any witness.

- (3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include -
 - (a) the holding of the proceedings at a place to be decided by the Special Court;
 - (b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgements or in any records of the case accessible to public;
 - (c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed;
 - (d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.
- (4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term, which may extend to one year and with fine, which may extend to one thousand rupees.
- 29. (1) No person shall hold or be in possession of any proceeds of organised crime.
- (2) If an officer, not below the rank of Superintendent of Police, investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of organised crime, he shall, with the prior approval in writing of the Director General of Police, make an order seizing such property, movable or immoveable or both, and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order or, as the case may be, the Special Court and a copy of such order shall be served on the person concerned.

Attachment and forfeiture of property.

- (3) The Investigating Officer shall duly inform the Special Court, within forty-eight hours of the seizure or attachment of such property.
- (4) It shall be open to the Special Court either to confirm or revoke the order of seizure or attachment made under sub-section (2):

Provided that the Special Court shall not pass an order unless an opportunity of making representation is given to the person whose property is being attached.

(5) (a) If, upon a report in writing made by an Investigating Officer with the approval of the supervisory officer referred to in sub-section (1) of section 16, the Special Court has reason to believe that any person who has committed an offence punishable under this Act has absconded or is concealing himself so that he may not be apprehended, the Special Court may, notwithstanding anything contained in section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the publication of such proclamation:

Provided that the Investigating Officer shall not make a report to the Special Court for issuing the proclamation until he tried and failed to arrest the accused who has absconded or is concealing himself, within a period of three months from the date of registering the offence against such person.

- (b) The Special Court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, moveable or immoveable or both belonging to such accused and thereupon the provisions of sections 83 to 85 of the Code shall apply to such attachment.
- (c) If the accused fails to appear before a Special Court as specified in the proclamation within the period of three months from the date of publication of proclamation, the Special Court shall pass an order for forfeiture of such property free from all encumbrances.
- (d) If within a period of six months from the date of forfeiture of property under clause (c), the accused whose

property has been forfeited, appears voluntarily before the Special Court and proves to the satisfaction of the court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of proclamation, the Special Court may pass an order for revoking the order of forfeiture of such property.

Where the accused has been convicted of any offence punishable under this Act, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both belonging to the accused and specified in the order shall stand forfeited to the State Government free from all encumbrances.

Explanation. - For the purpose of this section "proceeds of organised crime" means all kind of properties which have been derived or obtained from commission of any organised crime or have been acquired through funds traceable to an organised crime and shall include cash, irrespective of person in whose name such proceeds are standing or in whose possession they are found.

Where, after issue of order of seizure or attachment made Certain under section 29, any property referred to in such order is transfers to transferred by any mode whatsoever, such transfer shall, for the be null and purpose of proceedings under this Act, be ignored and if such void. property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

CHAPTER V

MISCELLANEOUS

(1) Notwithstanding anything contained in the Code or in Modified any other law, every offence punishable under this Act shall be application of deemed to be a 'cognizable offence' within the meaning of clause certain (c) of section 2 of the Code and 'cognizable case' as defined in that clause and shall be construed accordingly.

- Section 167 of the Code shall apply in relation to a case (2) involving an offence punishable under this Act subject to the modifications that in sub-section (2),
 - the reference to "fifteen days" and "sixty days" (a) wherever they occur, shall be construed as references to "thirty days" and "ninety days" respectively;

(b) after the proviso, the following proviso shall be inserted, namely:-

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period upto one hundred and eighty days on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for detention of the accused beyond the said period of ninety days."

- (3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.
- (4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless -
 - (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
 - (b) where the Public Prosecutor opposes the application, the Special Court is satisfied that there are reasonable grounds for believing that accused is not guilty of committing such offence and that he is not likely to commit any offence while on bail.
- (5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Special Court that he was on bail in an offence under this Act, or under any other Act on the date of the offence in question.
- (6) The restriction on granting of bail specified in sub-sections (4) and (5) are in addition to the restriction under the Code or any other law for the time being in force on the granting of bail.
- (7) The police officer seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reasons for seeking such custody and also for the delay, if any, in seeking the police custody.

Presumption as to offences under section 3.

32. (1) In a prosecution for an offence of organised crime punishable under section 3, if it is proved –

- (a) that unlawful arms and other material including documents or papers were recovered from the possession of the accused and there is reason to believe that such unlawful arms and other material including documents or papers were used in the commission of such offence; or
- (b) that by the evidence of an expert, the finger prints of the accused were found at the site of the offence or on anything including unlawful arms and other material including documents or papers and vehicle used in connection with the commission of such offence,

the Special Court shall presume, unless the contrary is proved, that the accused had committed such offence.

- (2) In a prosecution for an offence punishable under sub-section (2) of section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence of organised crime, the Special Court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2).
- 33. (1) Notwithstanding anything contained in the Code, -
 - (a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;
 - (b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Police Inspector.
- (2) No Special Court shall take cognizance of any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police.
- 34. Whoever, being a public servant, renders any help or support in any manner in the commission of organised crime as defined in clause (e) of section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act or intentionally avoids to carry out the directions of any court or of

Cognizance of, and investigation into, an offence.

Punishment for public servants failing in discharge of their duties. the superior police officers in this respect, shall be punished with imprisonment of either description for a term which may extend to three years and with fine.

Bar of jurisdiction of courts.

35. No civil court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to matter referred to in section 24.

Overriding effect.

36. The provisions of this Act and the rules or any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having the force of law.

Protection of action taken in good faith.

37. No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act and the rules or any order made thereunder.

Powers of High Court to make rules.

38. The High Court may, by notification in the Official Gazette, make such rules relating to the Special Courts, as it may deem necessary for carrying out the provisions of this Act.

Powers of State Government to make rules.

- 39. (1) Without prejudice to the powers of the High Court to make rules under section 38, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) All rules made under this Act shall be laid for not less than thirty days before the State Legislature as soon as may be they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.
- (3) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

STATEMENT OF OBJECTS OF REASONS

The organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fueled by illegal wealth generation by contract killing, extortion, smuggling in contrabands, illegal trade in narcotics, kidnappings for ransom, collection of protection money and money laundering etc. The illegal wealth and black money generated by the organised crime is very huge and has serious adverse effect on economy. It is noticed that the organised criminal syndicates make a common cause with terrorist gangs and foster macro terrorism which extend, beyond the national boundaries. There is reason to believe that organised criminal gangs are operating in the State and thus, there is immediate need to curb their activities.

It is also noticed that the organised criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and administration of justice.

The existing legal frame work i.e. the penal and procedural laws and the adjudicatory system are found to be rather inadequate to curb or control the menace of organised crime. It has therefore, been decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime.

This Bill seeks to achieve the aforesaid object.

The following notes on clauses explain the important provisions of the Bill:-

- Clause 1.— This clause provides for short title, extent and commencement.
- Clause 2.— This clause defines certain terms used in the Bill.
- Clause 3.— This clause provides for punishment for organised crime and other offences relating to organised crime.

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Clause 4.—	This clause provides for punishment for possessing unaccountable property on behalf of member of organized crime syndicate.
Clause 5.—	This clause provides for constitution of the Special Courts for trial of offences committed under the Act.
Clauses 6 and 7.—	These clauses provide for jurisdiction of Special Court and its powers with respect to other offences.
Clause 8.—	This clause provides for the appointment of Public Prosecutor, Additional Public Prosecutor and the Special Public Prosecutor.
Clause 9.—	This clause provides for procedure and powers of Special Court.
Clause 10.—	This clause provides for trial by Special Court to have precedence over trial by any other court.
Clause 11.—	This clause provides for transfer of cases to regular courts if offences are not triable by Special Court.
Clause 12.—	This clause provides that until Special Court is
	constituted, the court of session of the division shall have all the powers of Special Court to try offences under the
	Act.
Clause 13.—	This clause provides for appeal against the order of the Special Court.
Clause 14.—	This clause defines certain, terms used in Chapter IV relating to interception of communication in certain cases.
Clause 15.—	This clause provides for appointment of Competent
	Authority for the purpose of authorising interception of communication.
Clause 16.—	This 'clause provides for procedure for making an application for authorisation of interception of wire, electronic or oral communication by the police officer.
Clause 17.—	This clause provides for the detailed procedure to be followed by the Competent Authority while approving the interception.
Clause 18.—	This clause provides for submission of order of
Ciunse 10.	interception to Review Committee for approval.
Clause 19.—	This clause provides for the duration of order of interception etc.
Clause 20.—	This clause provides for the authority competent to carry out interception.
Clause 21.—	This clause empowers an officer not below the rank of Director General of Police to authorise interception in emergency cases.
Clause 22.—	This clause provides for protection of information collected through interception of communication.

Clause 23.—	This clause provides that evidence collected through interception, shall be admissible as evidence against the accused in the court during trial.
Clause 24.—	This clause provides for constitution of Review Committee and its powers.
Clause 25.—	This clause provides for punishment for disclosing interception and disclosure of wire, electronic or oral communications.
Clause 26.—	This clause provides for special rules of evidence for trial and punishment under the Act.
Clause 27.—	This clause provides for confessions made by the accused before police officer to be taken into consideration.
Clause 28.—	This clause provides for protection of witnesses.
Clause 29.—	This clause provides for attachment and forfeiture of property acquired from the proceeds of organised crime.
Clause 30.—	This clause provides for certain transfers of properties to be null and void.
Clause 31.—	This clause provides for modification of certain provisions of the Code of Criminal Procedure in its application to this Act.
Clause 32.—	This clause provides for presumption as to offences under section 3 unless contrary is proved.
Clause 33.—	This clause provides for cognizance of, and investigation into, an offence.
Clause 34.—	This clause provides for punishment for public servants failing in the discharge of their duties.
Clause 35.—	This clause provides for bar of jurisdiction of courts.
Clause 36.—	This clause provides for overriding effect over other laws.
Clause 37.	This clause provides for protection of action taken in good faith.
Clause 38.	This clause empowers the High Court to make rules relating to Special Courts.
Clause 39.	This clause empowers the State Government to make rules for carrying out the purposes of this Act.

AMIT SHAH

FINANCIAL MEMORANDUM

This Bill, if enacted and brought into force would not involve any expenditure from the Consolidated Fund of the State.

Clause 5 empowers the State Government to constitute one or more Special Courts for such area or areas for the trial of offences committed under this Act in the State. In the beginning, State Government may constitute Special Court. However, the existing session courts can be designated as Special Courts (in-consultation with the High Court) for the purpose of conducting trail of these cases and hence there will no financial burden.

Clause 8 empowers the State Government to appoint the Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor for every special court. The existing Public Prosecutors and Assistant Public Prosecutors may be appointed specially for conducting these cases and hence there will be no additional expenditure.

AMIT SHAH

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill Involves delegation of legislative powers in the following respects:--

- Clause 1.— Sub-clause (3) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.
- Clause 5.— Sub-clause (1) of this clause empowers the State Government to constitute by notification in the Official Gazette, one or more Special Courts.
- Clause 15.— This clause empowers the State Government to appoint an officer, not below the rank of Secretary to Government to be the Competent Authority.
- Clause 38.— This clause empowers the High Court to make rules relating to the Special Court.
- Clause 39.— Sub-clause (1) of this clause empowers the State Government to make rules for carrying out the purposes of this Act.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 17th March, 2003.

AMIT SHAH.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Gandinagar.
Dated the 17th March, 2003.

Secretary to the Government of Gujarat
Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.





The Gujarat Covernment Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT VALUE ADDED TAX BILL, 2003.

GUJARAT BILL NO. 31 OF 2003.

A RILL

to consolidate and amend the laws relating to the levy and collection of tax on value added basis in respect of sale or purchases of goods in the State of Gujarat.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Gujarat Value Added Tax Act, 2003.

Short title, extent and and commencement.

- (2) It extends to the whole of the State of Gujarat.
- (3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint, and different dates may be appointed for different provisions.

Definitions.

- 2. In this Act, unless the context otherwise requires,-
- (1) "agriculture" with all its grammatical variations and cognate expressions includes floriculture, horticulture, the raising of crops, grass or garden produce, and grazing; but does not include dairy farming, poultry farming, stock breeding or the mere cutting of wood or grass or gathering of fruits;
- (2) "agriculturist" means a person who cultivates land personally for the purpose of agriculture;
- (3) "appointed day" means the 1st day of April, 2003;
- (4) "business" includes -
 - (i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit or gain and whether or not any profit or gain accrues from such trade, commerce, manufacture, adventure or concern; and
 - (ii) any transaction of buying, selling or supplying plant, machinery, raw materials, processing materials, packing materials, empties, consumable stores, waste products, or such other goods, or waste or scrap of any of them which is ancillary or incidental to or resulting from such trade, commerce, manufacture, adventure or concern;
- (5) "capital goods" means plant and machinery meant for use in manufacture and such other goods, as may be notified by the State Government from time to time in the Official Gazette;
- (6) "Central Act" means the Central Sales Tax Act, 1956;

LXXIV of 1956.

- (7) "commission agent" means a dealer who bonafidely buys or sells, for an agreed commission, any goods on behalf of principals;
- (8) "Commissioner" means the person appointed to be the Commissioner of Commercial Tax for the purposes of this Act.
- (9) (a) "to cultivate" means to carry on any agricultural operation; and
 - (b) "to cultivate personally" means to cultivate on one's own account -
 - (i) by one's own labour, or
 - (ii) by the labour of one's own family, or
 - (iii) by servants on wages payable in cash or kind (but not in crop share), or by hired labour under one's personal supervision or the personal supervision of any member of one's family.

- Explanation I.— A widow or a minor or a person who is subject to any physical or mental disability, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour.
- Explanation II.— In the case of a Hindu Undivided Family, land shall be deemed to be cultivated personally if it is cultivated by any member of such family;
- (10) "dealer" means any person who, for the purpose of or consequential to his engagement in or, in connection with or incidental to or in the course of his business buys, sells, manufactures, makes supplies or distributes goods, directly or otherwise, whether for cash or deferred payment, or for commission, remuneration or otherwise and includes,-
 - (a) the Central Government or a State Government or any local authority such as municipality or municipal corporation or panchayat, a statutory authority, a company, a partnership firm, a Hindu Undivided Family or any society, club, association or body, incorporated or not, of persons which carries on business;
 - (b) a casual dealer, that is to say, a person who whether as principal, agent or in any other capacity, undertakes occasional transaction of a business nature in any exhibition-cum-sale or auction or otherwise in the State, whether for cash, deferred payment, commission, remuneration or other valuable consideration;
 - (c) an auctioneer, who sells or auctions goods belonging to any principal whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of principal;
 - (d) a factor, broker, commission agent, del credere agent or an auctioneer or any mercantile agent, by whatever name called, who carries on business on behalf of any principal whether disclosed or not;
 - (e) any person who transfers, otherwise than in pursuance of a contract, property in any goods for cash, deferred payment or other valuable consideration;
 - (f) any person who transfers property in goods (whether as goods or in some other form) involved in the execution of a works contract;
 - (g) any person who delivers goods on hire purchase or any system of payment by installments;
 - (h) any person who transfers the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; and
 - (i) any person who supplies, by way of or as part of any service or in any other manner whatsoever, goods being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration.

- Explanation.— (i) A society (including a co-operative society), club or firm or an association, which, whether or not in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, from or to its members or other persons for cash, deferred payment, commission, remuneration or other valuable consideration, shall be deemed to be dealer for the purposes of this Act.
 - (ii) The Central Government or a State Government or a local authority or railway administration or port trusts or a statutory body, which, whether or not in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash, deferred payment, commission, remuneration or other valuable consideration, shall be deemed to be dealer for the purposes of this Act.
 - (iii) Any person or body, which disposes of any goods including unclaimed, confiscated, unserviceable, scrap, surplus, old, obsolete, discarded, waste or surplus product or goods, whether by auction or otherwise, directly or through an agent, for cash deferred payment, commission, remuneration or other valuable consideration, shall be deemed to be dealer for the purposes of this Act.

Exceptions.— The following shall not be deemed to be a dealer within the meaning of this clause, namely:-

- (i) an agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally;
- (ii) an individual who sells exclusively any fish or any sea-food caught by him personally or by any member of his family on account of or on behalf of such individual; and
- (iii) a charitable, religious or educational institution, carrying on the activity of manufacturing, buying, selling or supplying goods, in performance of its functions, for achieving its avowed objects, which are not in the nature of business.
- (11) "declared goods" means goods declared to be of special importance in inter-State trade or commerce under section 14 of the Central Act;

LXXIV of 1956.

(12) "earlier law" means the Gujarat Sales Tax Act, 1969 and the Gujarat Purchase Tax on Sugarcane Act, 1989 as amended from time to time and enactments which have validated anything done or omitted to be done under the aforesaid Acts;

Guj. 1 of 1970. Guj. 1 of 1989.

(13) "goods" means all kinds of movable property (other than newspapers, actionable claims, electricity, stocks and shares and securities) and includes live stocks, all materials, articles and commodities and every kind of property (whether as goods or in some other form) involved in the execution of works contract, all intangible commodities and growing crops, grass, standing timber or things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale;

- "manufacture" with its grammatical variations and cognate expressions means includes producing, making, extracting, collecting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed;
- (15) "person" includes an individual, a joint family or Hindu Undivided Family, a company, a firm, an association of persons or body of individuals, whether incorporated or not, a society, club or other institution, a local authority, the Central Government or a State Government and every artificial juridical person not falling within any of the preceding descriptions;
- (16) "place of business" means any place where a dealer carries on business and includes,—
 - a warehouse, godown or other place where a dealer stores or processes his goods;
 - (b) any place where a dealer produces or manufactures goods;
 - (c) any place where a dealer keeps his books of accounts;
 - (d) any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting the goods;
 - (e) any place of business of an agent by whatever name called through whom a dealer carries on business;
- (17) "prescribed" means prescribed by rules;
- (18) "purchase price" means the amount of valuable consideration paid or payable by a person for any purchase made including the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962 and any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged and includes, -

(a) in relation to -

- the transfer, otherwise than in pursuance of a contract of property in any goods,
- (ii) the supply of goods by any unincorporated association or body of persons to a member thereof,
- (iii) the supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating),

the amount of cash, deferred payment or other valuable consideration paid or payable therefor,

5 of 1986. 52 of 1962.

- (b) in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, such amount as is arrived at by deducting from the amount of valuable consideration paid or payable by a person for the execution of such works contract, the amount representing labour charges for such execution.
- in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable by a person for such delivery;
- (19) "raw materials" means goods used as ingredient in the manufacture of other goods and includes processing materials, consumable stores and material used in the packing of the goods so manufactured but does not include fuels for the purpose of generation of electricity;
- (20) "registered dealer" means a dealer registered under the provisions of this Act, who holds a certificate of registration granted or deemed to have been granted under this Act;
- (21) "resale" means a sale of purchased goods,-
 - (i) in the same form in which they were purchased; or
 - (ii) without using them in the manufacture of any goods or without doing anything to them which amounts to or results in, a manufacture;

and the word "resell" shall be construed accordingly;

- (22) "rules" means the rules made under this Act;
- (23) "sale" means a sale of goods made within the State for cash or deferred payment or other valuable consideration and includes,-
 - (a) transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration.
 - (b) transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract,
 - (c) delivery of goods on hire purchase or any system of payment by installments.
 - (d) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration,
 - (e) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration,

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- (f) supply of goods by a society or club or an association to its members on payment of a price or of fees or subscription or any consideration.
- (g) supply of goods by way of or as part of any service or in any other manner whatsoever, of
- (h) supply of goods being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration,
- (i) supply by way of barter of goods,
- (j) disposal of goods by a person in the manner prescribed in Explanation (iii) to clause 10

but does not include a mortgage, hypothecation, charge or pledge; and the words "sell", "buy" and "purchase" with all their grammatical variations and cognate expressions shall be construed accordingly.

Explanation. - (i) - For the purposes of this clause, "sale within the State" includes a sale determined to be inside the State in accordance with the principles formulated in sub-section (2) of section 4 of the Central Act;

- (ii) for the purpose of sub-clause (b) of the expression "works contract" means a contract for execution of works and includes such works contract as the State Government may, by notification in the *Official Gazette*, specify;
- (iii) every transfer of property in goods by the Central Government, any State Government, a statutory body or a local authority for cash, deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act;
- "sale price" means the amount of valuable consideration paid or payable to a dealer or received or receivable by a dealer for any sale of goods made including the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962 and any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, and includes, -

5 of 1986. 52 of 1962.

- (a) in relation to ~
- (i) the transfer, otherwise than in pursuance of a contract, of property in any goods,
- (ii) the transfer of the right to use any goods for any purpose, whether or not for a specified period,
- (iii) the supply of goods by any unincorporated association or body of persons to a member thereof,

 the supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating),

the amount of cash, deferred payment or other valuable consideration paid or payable therefor;

- (b) in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour charges for such execution;
- in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery;
- (25) "Schedule" means a Schedule appended to this Act;
- (26) "the State" means the State of Gujarat;
- (27) "tax" means a tax leviable and payable under this Act on sales or purchase of goods and includes lumpsum tax leviable or payable under section 14;
- (28) "tax period" means a calendar month or a quarter as may be prescribed by the State Government;
- (29) "taxable goods" means goods other than those on the sales or purchase of which no tax is payable under section 5;
- (30) "taxable turnover" means the turnover of all sales or purchases of a dealer during the prescribed period in any year, which remains after deducting therefrom,-
 - (a) the turnover of sales not subject to tax under this Act;
 - (b) the turnover of goods declared exempt under sub-section (1) of section 5 or under a notification under sub-section (2) of section 5, and
 - (c) in case of turnover of sales in relation to works contract, the charges towards labour, service and other like charges, and subject to such conditions as may be prescribed:

Provided that in the cases where the amount of charges towards labour, service and other like charges in such contract are not ascertainable from the terms and conditions of the contract, the amount of such charges shall be calculated in such manner as may be prescribed;

(31) "Tribunal" means the tribunal constituted under section 19;

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- (32) "turnover of purchases" means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of any purchase of goods made by him during a given period after deducting the amount of purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period;
- (33) "turnover of sales" means the aggregate of the amount of sale price received or receivable by a dealer in respect of any sale of goods made during a given period after deducting the amount of sale price, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period;
- (34) "total turnover" means aggregate of the following transactions effected by a dealer:
- (a) turnover of sales or purchases of goods within the State whether such sales or purchases of goods are taxable or exempt under this Act;
- turnover of sales of goods in the course of inter-State trade or commerce;
- (c) turnover of sales of goods in the course of export of goods out of the territory of India;
- (d) turnover of sales by a dealer on his own account and also on behalf of his principal.
- (35) "value of goods" means the value as ascertained from the purchase invoices or bills and includes insurance charges, excise duties, countervailing duties, value added tax, sales tax, transport charges, freight charges and all other charges incidental to the transaction of the goods:

Provided that where the purchase invoices or bills are not produced or when the goods are acquired or obtained otherwise than by way of purchase, the value of goods shall be the value at which the goods of like kind or quality are sold or are capable of being sold in open market;

- (36) "year" means -
 - in relation to any dealer who maintains regular books of accounts, the year by reference to which the accounts are maintained by him; and
 - (ii) in relation to any other dealer, a financial year:

Provided that a registered dealer shall not be entitled to vary the year by reference to which he maintains his books of accounts, except with the consent of the Commissioner and upon such conditions as the Commissioner may determine.

CHAPTER II

INCIDENCE AND LEVY OF TAX

Incidence of tax.

- . (1) Subject to the provisions of this Act, every dealer,-
- whose total turnover during the year immediately preceding the appointed day exceeded rupees five lakhs and whose taxable turnover exceeded rupees ten thousand in a year (the aforesaid amounts of total turnover and taxable turnover are hereinafter referred to as "thresholds of turnover"), or
- (ii) who was registered under the earlier law or under the Central Act as on the appointed day, or
- (iii) whose total turnover and taxable turnover in any year first exceed the thresholds of turnover, or
- (iv) who is registered or liable to be registered as a dealer under this Act or under the Central Act at any time after the appointed day
 - shall be liable to pay tax in accordance with the provisions of this Act.
- (2) Notwithstanding anything contained in this section, a casual dealer or an auctioneer shall be liable to be registered if his taxable turnover of sales exceeds ten thousand rupees and he shall be liable to pay tax in accordance with the provisions of this Act.
- (3) The dealer shall be liable to pay tax,—
- (a) in case of clauses (i) and (ii) of sub-section (1), with effect from the appointed day;
- in case of clause (iii) of sub-section (1), with immediate effect when his turnover calculated from the commencement of the year first exceeds the thresholds of turnover;
- (c) in case of clause (iv) of sub-section (1), with immediate effect when he becomes so liable or the date of registration under this Act, whichever is earlier:

Provided that the dealer shall not be liable to pay tax in respect of thresholds of turnover as takes place during the period prior to the relevant date of effect under this sub-section.

(4) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of one year during which his total turnover and taxable turnover have remained below the thresholds of turnover and such further period after the date of such expiry as may be prescribed; and on the expiry of such further period his liability to pay tax shall cease:

Provided that any feeler whose liability to pay tax under this Act ceases or his total turnover and taxable turnover during the year remains below the thresholds of turnover, may apply for the cancellation of his certificate of

registration; and on such cancellation, his liability to pay tax shall cease and such dealer shall remain liable to pay tax till his certificate of registration is cancelled.

- (5) Every dealer whose liability to pay tax under this Act has ceased under sub-section (4) or whose certificate of registration has been cancelled, shall, if his total turnover and taxable turnover calculated from the commencement of any year (including the year in which the registration has been cancelled) again exceed the thresholds of turnover, on any day within such year, be liable to pay tax with effect from the date immediately following the day on which his such turnover again exceed thresholds of turnover of sales effected by him after that date.
- (6) Where by an order passed under this Act, it is found that any person registered as a dealer ought not to have been so registered, then, notwithstanding anything contained in this Act, such person shall be liable to pay tax for the period commencing with the date of his registration and ending with the date of such order, as if he were a dealer.
- 4. Nothing contained in this Act or the rules made thereunder shall be deemed to impose or authorise the imposition of tax on any sale or purchase of any goods where such sale or purchase takes place-

Certain sales and purchases not liable to tax.

- (a) in the course of inter-State trade or commerce; or
- (b) outside the State; or
- (c) in the course of the import of goods into or export of goods out of the territory of India,

and the provisions of this Act and the rules thereunder shall be construed accordingly.

Explanation.-Section 3, 4 and 5 of the Central Act shall apply for determining whether or not a particular sale or purchase has taken place in the manner indicated in clause (a), (b) or (c).

5. (1) The goods specified in the Schedule I shall be exempt from tax subject to the conditions and exceptions set out therein.

Exemptions.

- (2) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the *official gazette*, exempt any class of sales or purchases from payment of the whole of the tax payable under the provisions of this Act.
- (3) Every notification issued under sub-section (2) shall be laid for not less than thirty days before the State Legislature as soon as possible after it is issued and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make, during the session in which it is so laid or session immediately following. Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.
- 6. Subject to the other provisions of this Act, every dealer, who is liable to pay tax under this Act, shall pay the tax leviable in accordance with the provisions of this Act.

Taxes
payable by a
dealer

Levy of tax on turnover of sales and rates of tax.

- 7. (1) Subject to the provisions of this Act, there shall be levied a tax on the turnover of sales of goods specified in Schedule II at the rate set out against each of them in the said Schedule.
- (2) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the *Official Gazette*, add to or omit from, or otherwise amend or modify the Schedule, prospectively or retrospectively, or transpose any entry or part of any entry from one Schedule to the other Schedule or reduce the rate of tax payable in respect of any goods and thereupon the Schedule shall be deemed to have been amended accordingly.
- (3) Every notification issued under sub-section (2) shall be laid for not less than thirty days before the State Legislature as soon as possible after it is issued and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make, during the session in which it is so laid or session immediately following. Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

Adjustments in tax.

- 8. (1) The provisions of sub-section (2) shall apply where, in relation to the sales of taxable goods by any registered dealer-
 - (a) that sale has been cancelled; or
 - (b) the consideration previously agreed upon for that sale has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason; or
 - (c) the goods or part of the goods sold have been returned to the seller, and as a result of the occurrence of any one or more of the abovementioned events of such sales, the seller has-
 - (i) provided a tax invoice in relation to that sale and the amount shown therein as tax charged on that sale is incorrect in relation to the amount properly chargeable on that sale; or
 - (ii) furnished a return in relation to the period in respect of which tax on that sale is attributable, and has accounted for an incorrect amount of tax on that sale in relation to the amount properly chargeable on that sale.
- (2) Where a seller has accounted for either in the tax invoice or in the return an incorrect amount of tax as contemplated in sub-section (1), such seller shall make an adjustment in calculating the tax payable by him in the return for the tax period during which it has become apparent that the tax is incorrect. Such adjustment shall be made in the following manner, namely:-
- if the amount of tax chargeable in relation to that sale exceeds the amount of tax actually accounted for by the seller, the amount of that excess shall be deemed to be tax charged by such seller in relation to a taxable sale attributable to the tax period in which the adjustment is to be made, and shall not be attributable to any prior tax period; or

the amount of tax actually accounted for exceeds the amount of tax properly chargeable in relation to that sale, such seller shall reduce the amount of tax attributable to the said tax period in terms of section 7 by that excess amount of tax:

Provided that the reduction in the amount of tax under clause (b) shall not be made-

- where the excess tax has been borne by the purchaser of goods, (a)
- if the relevant event as described in sub-section (1) has occurred (b) subsequent to the period of six months of the sales made by the dealer.
- (1) Where a dealer who is liable to pay tax under this Act purchases any taxable goods from a person who is not a registered dealer, then there shall be levied on such dealer a purchase tax on the turnover of such purchases at the rate set out against each of such goods in Schedule II of this Act:

Levyof purchase tax.

- Where a registered dealer purchases sugarcane from a person who is not a registered dealer, for the purpose of use thereof in the manufacture of sugar or khandsari, there shall be levied a purchase tax on the purchase of such sugarcane at the rate set out therefor in Schedule II of this Act.
- Where any person or dealer has purchased any taxable goods under a certificate or declaration given by him under any provision of this Act or earlier law, rule or notification, and the conditions, recitals or undertakings of such certificate or declaration are not complied with, then such person or dealer shall be liable to pay purchase tax on the turnover of such purchases at the rate set out against each of such goods in Schedule II of this Act or at the applicable rate of tax under the earlier law, whichever is higher.
- Notwithstanding anything contained in this Act and contract of sale, where goods packed in any materials are sold, the materials in which the goods on packing are so packed shall be deemed to have been sold or purchased alongwith the goods and the tax shall be leviable on such sales or purchases of the materials at the rate of tax, if any, as applicable to the sales or as the case may be, purchase of the goods themselves.

(1)(a) A registered dealer who has purchased the taxable goods (hereinafter referred to as the "purchasing dealer") shail be entitled to claim tax credit equal to the amount of,-

- tax collected from him, by a registered dealer who has sold such goods to him or the tax payable by high to a registered dealer who has sold such goods to him during the tax period, or
- (ii) tax paid by him during the tax period under sub-section (1) or (2) of section 9.
- (b) The tax credit to be so claimed under this sub-section shall be subject to the provisions of sub-sections (2) to (12); and the tax credit shall be calculated in such manner as may be prescribed.

- (2) The registered dealer who intends to claim the tax credit shall maintain the register and the books of accounts in such manner as may be prescribed.
- (3)(a) Subject to the provisions of this section, tax credit to be claimed under sub-section (1) shall be allowed to a purchasing dealer on his purchase of taxable goods made mentioned in (i) or (ii) above which are intended for the purpose of-
 - (i) sale or re-sale by him in the State;
 - (ii) sale in the course of inter-State trade and commerce, other than the sales in the course of export out of the territory of India;
 - (iii) use as raw material in the manufacture of taxable goods intended for sale mentioned in (i) or (ii) above or in the packing of the goods so manufactured:

Provided that if purchases are used partially for the purposes specified in this sub-section, the tax credit shall be allowed proportionate to the extent they are used for the purposes specified in this sub-section.

- (b) Notwithstanding anything contained in this section, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four per cent. on the turnover of purchases-
 - (i) of taxable goods consigned or dispatched for branch transfer or to his agent outside the State, or
 - (ii) of taxable goods which are used as raw materials in the manufacture, or in the packing of goods which are dispatched outside the State in the course of branch transfer or consignment or to his agent outside the State.
- (4) The tax credit shall not be claimed by the purchasing dealer until the tax period in which he receives from a registered dealer from whom he has purchased taxable goods, a tax invoice (in original) containing particulars as may be prescribed under sub-section (1) of section 60 evidencing the amount of tax.
- (5) Notwithstanding anything contained in this Act, tax credit shall not be allowed for purchases-
 - (a) made from any person other than a registered dealer under this Act;
 - (b) made from a dealer who is not liable to pay tax under this Act;
 - (c) made from a registered dealer who has been permitted under section 14 to pay lump sum amount of tax in lieu of tax.;
 - (d) made prior to the relevant date of liability to pay tax as provided in subsection (3) of section 3;
 - (e) made in the course of inter-State trade and commerce;
 - of the goods which are disposed of otherwise than in sale, resale or manufacture;

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- (g) of the goods specified in the Schedule I or the goods exempt from whole of tax by a notification under sub-section (2) of section 5;
- (h) of the goods which are used in manufacture of goods specified in Schedule I or in the packing of goods so manufactured;
- (i) of the goods which are in the nature of capital goods as defined in clause
 (5) of section 2 and which are meant for use as capital goods in the manufacture;
- of vehicles of any type and its equipment, accessories or spareparts (except when purchasing dealer is engaged in the business of sales of such goods)
- (k) property or goods not connected with the business of the dealer;
- (I) of the goods which are used as fuel in generation of electrical energy meant for captive use or otherwise;
- (m) of the goods which are used as fuel in motor vehicles;
- of the goods which remain as unsold stock at the time of closure of business;
- (o) where original invoice does not contain the details of tax charged separately by the selling dealer from whom purchasing dealer has purchased the goods;
- (p) where original tax invoice is not available with purchasing dealer or there is evidence that the same has not been issued by the selling dealer from whom the goods are purported to have been purchased;

Notwithstanding anything contained in clause (a) or (b) in this sub-section and subject to conditions as may be prescribed, a registered dealer shall be allowed to claim tax credit in respect of purchase tax paid by him under sub-section (1) or (2) of section 9.

- (6) The State Government may, by notification in the *Official Gazette*, specify any goods or the class of dealers that shall not be entitled to whole or partial tax credit.
- (7) Where a registered dealer without entering into a transaction of sale, issues to another registered dealer tax invoice, retail invoice, bill or cash memorandum with the intention to defraud the Government revenue or with the intention that the Government may be defrauded of its revenue, the Commissioner may, after making such inquiry as he thinks fit and giving a reasonable opportunity of being heard, deny the benefit of tax credit, in respect of such transaction, to such registered dealers issuing or accepting such tax invoice, retail invoice, bill or cash memorandum either prospectively or retrospectively from such date as the Commissioner may, having regard to the circumstances of the case, fix.
- (8) If the goods purchased were intended for the purposes specified under sub-section (3) and are subsequently used fully or partly for purposes

other than those specified under the said sub-section or are used fully or partly in the circumstances described in sub-section (5), the tax credit, if availed of, shall be reduced on account of such use, from the tax credit being claimed for the tax period during which such use has taken place; and such reduction shall be done in the manner as may be prescribed.

- (9) The registered dealer may claim the amount of net tax credit, which shall be determined in the manner as may be prescribed.
- (10) Where any purchaser, being a registered dealer, has been issued with a credit note or debit note in terms of section 61 or if he returns or rejects goods purchased, as a consequence of which the tax credit availed by him in any period in respect of which the purchase of goods relates, becomes either short or excess, he shall compensate such short or excess by adjusting the amount of tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned, subject to such conditions as may be prescribed.
- (11) A registered dealer shall apply fair and reasonable method to determine, for the purpose of this section, the extent to which the goods are sold, used, consumed or supplied, or intended to be sold, used, consumed or supplied. The Commissioner may, after giving the dealer an opportunity of being heard and for the reasons to be recorded in writing, reject the method adopted by the dealer and calculate the amount of tax credit as he deems fit.
- (12) Subject to the exceptions as may be prescribed by the rules, any dealer including the Commission agent shall not be permitted to transfer his tax credit to any other dealer or as the case may be, the principal.

Explanation..—For the purpose of this section, the amount of tax credit on any purchase of goods shall not exceed the amount of tax actually paid or payable under this Act in respect of the same goods.

Tax credit for stock on 31st March, 2003. 12. (1) Within the period as may be prescribed, all the dealers who are deemed to have been registered under section 23 shall furnish in such form and to such authority as may be prescribed, a statement of taxable goods under this Act held in stock on the 31st March, 2003 for which the dealer intends to claim tax credit under this Act.

Explanation.— For the purpose of this section, "taxable goods held in stock" includes taxable goods in the process of use in the manufacture as on the 31st March, 2003.

- (2) A registered dealer who has submitted the statement of taxable goods under sub-section (1) shall not be permitted to make any changes in the details of such statement if such changes result in increase in the tax credit claimed in the statement of taxable goods.
 - (3) If the goods shown in the statement referred to in sub-section (1) -
 - (a) were liable to tax under the earlier law, and the purchasing registered dealer had paid the amount of tax to the selling registered dealer under the earlier law or had paid purchase tax under the earlier law, and

(b) are intended to be used for the purposes specified in sub-section (3) of section 11 -

then the amount of tax so paid by the purchasing dealer on such goods, determined in such manner and subject to the provisions of section 11 as far as they may apply and further subject to such conditions and restrictions and to such extent as may be prescribed, shall be allowed as the tax credit to the dealer referred to in sub-section (1). Such tax credit shall be available as the outstanding credit brought forward for being claimed in such manner as may be prescribed.

- (4) Notwithstanding anything contained in this section, no tax credit under this section shall be allowed in respect of those goods,-
 - (a) which are not taxable under this Act or the earlier law;
 - (b) which are not included in the statement of taxable goods referred to in sub-section (1);
 - (c) for which the dealer does not have in his possession sales vouchers issued by a dealer registered under the earlier law, against the purchases of the said goods or for which purchase tax payable under earlier law has not been paid by the 31st March, 2003;
 - (d) which are not recorded in the books of accounts of the dealer claiming tax credit under this section; or
 - (e) which are declared as "prohibited goods" under clause (21) of section 2 of the Gujarat Sales Tax Act, 1969.

Guj. 1 of 1970.

- (5) Where the amount of tax on the goods purchased/is not indicated separately on the sale vouchers, the tax credit under this section shall be calculated in the manner as may be prescribed.
- (6) The provisions of section 11 shall apply mutatis-mutandis to the tax credit to be availed of under this section.
 - (7) If the Commissioner is satisfied that a dealer -
 - (a) has claimed tax credit for such stock for which he is not entitled for claiming tax credit as per the provisions of section 11 and subsections (3) and (4) of section 12, or
 - (b) has claimed excess tax credit than what he is entitled to under section 11 or under this section

the Commissioner may, after giving the dealer an opportunity of being heard direct him to pay a penalty equal to twice the amount of tax credit so claimed.

13. The net amount of Value Added Tax for a tax period payable shall be .. Net amount determined after the adjustment of tax credit in the manner as may be prescribed.

of Value Added Tax. Option for payment of lumpsum tax in lieu of tax on sales.

- 14. (1) (a) Notwithstanding anything contained in this Act, the Commissioner may, in such circumstances and subject to such conditions as may be prescribed, permit any dealer, who is not engaged in the activity of manufacture and whose total taxable turnover has not exceeded rupees twenty-five lakhs in the previous year, to pay lump sum tax in lieu of the amount of tax payable under section 7 of this Act.
- (b) The permission granted under sub-section (1) shall remain valid so long as the total taxable turnover of the registered dealer does not exceed rupees twenty-five lakhs. In case where total taxable turnover of a registered dealer exceeds rupees twenty-five lakhs during the course of the year, he shall be liable to pay tax under the provisions of this Act from the tax period as may be prescribed for this purpose.

Explanation.—: For the purpose of permission under clause (a) for the year 2003-04, total taxable turnover shall be calculated with reference to the Gujarat Sales Tax Act, 1969.

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- (2) The State Government may, fix the rate of lump sum tax by notification in the Official Gazette.
- (3) A dealer who is permitted under sub-section (1) to pay lump sum tax shall not,-
 - (a) be entitled to claim tax credit in respect of tax paid by him on his purchases,
 - (b) charge any tax under this Act in his sales bill or sales invoice in respect of the sales on which lump sum tax is payable; and
 - (c) issue tax invoice to any dealer who has purchased the goods from him.
- (4) A dealer who is permitted under sub-section (1) to pay lump sum tax shall be liable to pay, in addition to the lump sum tax under this section;—
 - (a) purchase tax leviable under sub- sections (1) and (3) of section 9;
 - (b) tax at the rate specified under section 7 in respect of sales of goods within the State,-
 - (i) which are purchased or brought from other State in any manner, or
 - (ii) which are purchased in the course of import from outside the territories of India, and

Explanation.— For the removal of doubt, it is clarified that the dealer who has been permitted to opt for composition under this section shall be liable to pay central sales tax as per the provisions of Central Act in respect of sales made by him in the course of inter-State trade and commerce.

Burden of proof.

15. The burden of proof shall lie on a dealer who claims that he is not liable to pay tax under this Act in respect of any sale effected by him or is eligible for a tax credit under section 11 and section 12.

CHAPTER III

COMMERCIAL TAX AUTHORITIES AND TRIBUNAL.

16. (1) For carrying out the purposes of this Act, the State Government shall appoint an officer to be called the Commissioner of Commercial Tax.

Commercial tax authorities and jurisdiction.

- (2) To assist the Commissioner in the execution of his functions under this Act, the State Government may appoint Special Commissioners, Additional Commissioners and such number of
 - (a) Joint Commissioners,
 - (b) Deputy Commissioners,
 - (c) Assistant Commissioners,
 - (d) Commercial Tax Officers, and
- (e) other officers and persons, and give them such designations, as the State Government thinks necessary.
- (3) The Commissioner shall have jurisdiction over the whole of the State, the Special Commissioner and an Additional Commissioner shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof. All other officers shall have jurisdiction over the whole of the State or over such local areas as the State Government may specify.
- (4) The Commissioner shall have and exercise all the powers and perform all the duties, conferred or imposed on him by or under this Act. The Special Commissioner and an Additional Commissioner shall, save as otherwise directed by the State Government, have and exercise within his jurisdiction all the powers and perform all the duties, conferred or imposed on the Commissioner by or under this Act.
- (5) A Joint Commissioner shall have and exercise, in the area within his jurisdiction all the powers and shall perform all the duties conferred or imposed on the Commissioner by or under this Act. The Commissioner may, by order published in the Official Gazette, direct that any or all Joint Commissioners shall not exercise such powers or perform such duties as are specified in the order, and there-upon such Joint Commissioner or, as the case may be, all Joint Commissioners, shall cease to exercise those powers and perform those duties. The Commissioner may in like manner revoke any such direction and thereupon the powers or duties exercisable or performable by such Joint Commissioner, or as the case may be, all Joint Commissioners before such direction was issued, shall be restored to him or them.
- (6) The Deputy Commissioners, Assistant Commissioners, Commercial Lax Officers and other officers shall within their jurisdiction exercise such of the powers and perform such of the duties of the Commissioner under this Act, as the Commissioner may, subject to such conditions and restrictions as the State Government may by general or special order impose, by order in writing delegate to them either generally or as respects any particular matter or class of matters.

- (7) The State Government may, subject to such restrictions and conditions as it may impose by notification in the Official Gazette, delegate to the Commissioner the power (not being powers relating to the appointment of Special commissioner, Additional Commissioner or Joint Commissioners), conferred on the State Government by sub-sections (2) and (3).
- (8) All officers and persons appointed under sub-section (2) shall be subordinate to the Commissioner; and the subordination of officers (other than the Commissioner), and of persons amongst themselves shall be such as may be prescribed.

Power to transfer proceedings.

- 17. (1) The Commissioner may, after due notice to the concerned parties and by order in writing, transfer any proceedings or class of proceedings under any provision of this Act from himself to any other officer and he may likewise transfer any such proceedings (including a proceeding already transferred under this section) from one such officer to another or to himself.
- (2) The officer to whom any proceeding is transferred under sub-section (1) shall proceed to dispose it of as if it had been initiated by himself.
- (3) The transfer of proceedings shall not render necessary the re-issue of any notice already issued before such transfer and the officer to whom the proceeding is transferred may continue it from the stage at which it was left by the officer from whom it was transferred.

Explanation.—For the purposes of this section, "proceedings" in relation to any person whose name is specified in any order issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or which may have been completed on or before such date, and includes also such proceedings which may be commenced after the date of such order in respect of any year.

Disputes regarding jurisdiction of tax authority.

- 18. (1) No person shall be entitled to call in question the jurisdiction of any tax authority appointed under section 16, after the expiry of thirty days from the date of receipt by that person of any notice issued by such tax authority under this Act.
- (2) An objection as to the jurisdiction of any such tax authority may be raised within the periods aforesaid by submitting a memorandum to that tax authority who shall refer the question to the Commissioner and the Commissioner shall after giving the person raising the objection, a reasonable opportunity of being heard, make an order determining the question of jurisdiction and his decision in this behalf shall be final.

Tribunal.

- 19. (1) The State Government shall constitute a Tribunal consisting of as many as members as it thinks fit to discharge the functions conferred on the Tribunal by or under this Act.
- (2) The State Government shall appoint one of the members of the Tribunal to be President thereof.
- (3) The qualifications of the members constituting the Tribunal shall be such as may be prescribed and a member shall hold office for such period as the State Government may fix.

- (4) The State Government may terminate the appointment of any member of the Tribunal before the expiny of term of his office, if such member,
 - (a) is adjudged an insolvent, or ::
 - (b) engages during his term of office in any paid employment outside the duties of his office, or
 - (c) is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the State Government or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member, or
 - (d) is in the opinion of the State Government, unfit to continue in office by reason of infirmity of mind or body, or
 - (e) is convicted of an offence involving moral turpitude.
- (5) Any vacancy of a member of the Tribunal shall be filled up by the State Government as soon as practicable.
- (6) The functions of the Tribunal may be discharged by one or more benches thereof constituted in accordance with the regulations made under sub-section (9).
- (7) If the members of the Tribunal or a Bench thereof are divided, the decision shall be the decision of the majority, if there be a majority, but if the members are equally divided they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points to one or more of the other members of the Tribunal, and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it.
- (8) Subject to such conditions and limitations as may be prescribed, the Tribunal shall have power to award cost and the amount of such costs shall be recoverable from the person ordered to pay the same as an arrears of land revenue.
- (9) Subject to the previous sanction of the State Government, the Tribunal shall, for the purpose of regulating its procedure (including the place or places at which the Tribunal or the Benches thereof shall sit) and the disposal of its business, make regulations consistent with the provisions of this Act and the rules.
- (10) The regulations made under sub-section (9) shalf be published in the Official Gazette.
- 20. (1) In discharging their functions under this Act, the Tribunal and the Powers of Commissioner shall have all the powers of a civil court for the purpose of,— Tribunal a

(a) receiving of proof of facts on affidavit;

Powers of Tribunal and Commissioner.

- (b) summoning and enforcing the attendance of any person, and examining him on oath or affirmation;
- (c) compelling the production of documents; and
- (d) issuing commissions for the examination of witnesses.
- (2) In the case of any affidavit to be made for the purposes of this Act, any officer appointed by the Tribunal or the Commissioner may administer the oath to the deponent.

CHAPTER IV

REGISTRATION

Registration.

21. (1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he possesses a valid certificate of registration as provided by this Act:

Provided that the provisions of this sub-section shall not be deemed to have been contravened if the dealer having applied for such registration, as provided in this section, within the prescribed time carries on such business.

- (2) A dealer dealing exclusively in goods specified in Schedule I shall not be liable for registration.
- (3) Every dealer, required by sub-section (1) to possess a certificate of registration, shall apply in such form, to such authority and in such manner as may be prescribed.
- (4) If the prescribed authority is satisfied that an application for registration is in order, it shall register the applicant and issue him a certificate of registration in the prescribed form.
- (5) The prescribed authority may, after considering any information furnished under any provisions of this Act or otherwise received, amend from time to time, any certificate of registration.
- (6) When a dealer has been subjected or is liable to be subjected to a penalty or is convicted in respect of contravention of the provisions of sub-section (1), the prescribed authority shall register such dealer, if such dealer is not a registered dealer, and issue him a certificate of registration. Such registration shall take effect from the date of the issue of the certificate in every respect as if it had been issued under sub-section (3) on an application of the dealer.
 - (7) Where -
 - (a) any business, in respect of which a certificate of registration has been issued under this section, has been discontinued or, transferred, or
 - (b) total turnover and taxable turnover of a dealer during the preceding year has not exceeded the thresholds of turnover specified in sub-section (1) of section 3,-

and the dealer applies in the prescribed manner for cancellation of his registration, the prescribed authority shall cancel the registration with effect from such date as it may fix in accordance with the rules.

- (8) Where the Commissioner is satisfied that any business in respect of which a certificate of registration has been issued under this section, has been discontinued and the dealer has failed to apply as aforesaid for cancellation of registration, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, cancel the registration with effect from such date as he may fix to be the date from which the business has been discontinued.
- (9) The cancellation of a certificate of registration on an application of the dealer or otherwise, shall not affect the liability of the dealer to pay the tax, penalty or interest due for any period prior to the date of cancellation whether such tax, penalty or interest is assessed before the date of cancellation but remains unpaid, or is assessed thereafter.
- 22. (1) A dealer having a fixed or regular place of business in the State and who is not required to be registered under section 21, may apply in the prescribed manner for the certificate of registration to the authority prescribed for the purpose under section 21.

Voluntary registration.

(2) If the prescribed authority is satisfied that the application made by the dealer under sub-section (1) is in order, it may grant him a certificate of registration in the prescribed form:

Provided that no certificate of registration under this section shall be granted to the dealer unless he deposits an amount of rupees twenty-five thousand in the Government treasury. The dealer may, in his return to be furnished in accordance with section 29, adjust the amount so deposited against his liability to pay tax, penalty or interest payable under this Act.

- (3) The provisions of sub-section (4) and clause (a) of sub-section (7) and sub-section (8) of section 21 shall apply in respect of the amendment or cancellation of certificate of registration granted under this section.
- (4) Notwithstanding anything contained in this Act, every dealer who has been registered under sub-section (2) shall, so long as his registration remains in force, be liable to pay the tax under this Act.
- 23. Every dealer registered as on the appointed day under any of the earlier laws or under the Central Act shall be deemed to be registered under section 21.

Deemed registration.

24. Save as otherwise provided in section 25, a certificate of registration shall be personal to the dealer to whom it is granted and shall not be transferable.

Nontransferability of registration.

25. Where,

- (a) a registered dealer is a firm and on the death of any partner of such firm, the firm stands dissolved, and
- (b) the person who immediately before such dissolution was a partner of the firm carries on business of the dissolved firm, as proprietor, then-

Continuation of certificate of registration of dissolved firm.

- (i) until the certificate of registration granted to the firm prior to its dissolution is amended under sub-clause (ii), the certificate of registration granted to the firm prior to its dissolution shall, subject to section 27, continue to be valid for a period of six months;
- (ii) on an application made by such person within a period of six months from the date of dissolution, of the firm for amendment of the certificate of registration and on information being furnished in the manner required by section 26, the certificate of registration granted to the firm prior to its dissolution shall be amended accordingly.

Amendment of certificate of registration.

- 26. (1) Where a registered dealer -
 - (a) transfers his business, in whole or in part, or transfers his place of business, by sale, lease, leave or licence, hire or in any other manner whatsoever, or otherwise disposes of his business or any part thereof or effects or comes to know of any other change in the ownership of the business;
 - (b) discontinues his business or changes the place of business thereof or opens a new place of business, or temporarily closes the business for a period more than thirty days;
 - (c) changes the name, style, constitution or nature of his business; or
 - (d) enters into partnership or other association in regard to his business or effects any changes in the ownership of the business,

he shall, within the prescribed time inform the prescribed authority accordingly, and if any such dealer dies, his legal representative shall inform of such death or where any such dealer is a firm and there is any change in the constitution of the firm or the firm is dissolved, every person who was a partner thereof, shall in like manner, inform the said authority of the change in the constitution or as the case may be, dissolution of the firm.

(2) The Commissioner may, after considering any information furnished under this Act or otherwise received and after making such inquiry as he may deem fit, amend from time to time, any certificate of registration:

Provided that the Commissioner shall, before amending on his own motion a certificate of registration, give the dealer affected by such amendment an opportunity of being heard.

- (3) An amendment of the certificate of registration made under subsection (1) or (2) shall take effect from the date of contingency, which necessitates the amendment, whether or not information in that behalf is furnished within the time prescribed under sub-section (1).
- (4) Any amendment of a certificate of registration under this section shall be without prejudice to any liability for tax, interest or penalty or for any prosecution for an offence under this Act.
- (5) If a dealer fails, without sufficient cause, to comply with the provisions of sub-section (1), the Commissioner may after giving the dealer a reasonable

opportunity of being heard, direct him to pay, by way of penalty a sum of rupees one hundred per day of default subject to a maximum of rupees five thousand.

- (6) For the removal of doubts, it is hereby declared that where a registered dealer-
 - (a) effects a change in the name of his business;
 - (b) is a firm and there is a change in the constitution of the firm without dissolution thereof;
 - (c) is a trustee of a trust and there is a change in the trustees thereof;
 - (d) is a Hindu Undivided Family and the business of such family is converted into a partnership business with all or any of the co-parceners as partners thereof; or
 - (e) is a firm or a company or a trust or any other set up and change in the management takes place including the change of the director or the Managing Director of the company;

then merely by reason of the circumstances as aforesaid, it shall not be necessary for the dealer to apply for a fresh certificate of registration and on information being furnished in the manner required by this section, the certificate of registration shall be amended.

27. Where-

Cancellation of registration.

- (a) any business, in respect of which a certificate of registration has been issued to a dealer under this Act is discontinued;
- (b) in the case of transfer of whole business by a dealer, the transferee already holds a certificate of registration under this Act;
- (c) an incorporated body has been wound up or it otherwise ceases to exist;
- (d) the owner of a proprietorship business dies leaving no successor to carry on the business;
- (e) in case of a firm or association of persons, it is dissolved; or
- (f) a dealer has ceased to be liable to pay tax under this Act,-

the Commissioner may cancel the certificate of registration of such dealer or the transferor, as the case may be, from such date, as may be specified by him.

- (2) A registered dealer, whose certificate of registration is liable to be cancelled under sub-section (1), may apply for cancellation of his registration to the prescribed authority, in the manner and within the time prescribed.
- (3) On receipt of such application from the dealer, if the registering authority is satisfied that the dealer fulfils the conditions specified in sub-section (1), he shall cancel the registration of such dealer.

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- (4) The certificate of registration shall be deemed to be inoperative-
- (a) in case of clause (a) or (b) of sub-section (1), with effect from the date of discontinuance or, as the case may be, transfer of the business;
- (b) in case of clause (c), (d), (e), or (f) of sub-section (1), from the date on which the dealer's liability to pay tax has ceased,

notwithstanding the fact that the order of cancellation is passed or not or that the particulars of the dealer regarding cancellation are published as required under sub-section: (11), or not.

(5) If a dealer -

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- (a) has failed to file three consecutive returns within the time prescribed under this Act;
- (b) knowingly furnishes incomplete or incorrect particulars in his returns;
- (c) has failed to pay tax due from him under the provisions of this Act;
- (d) having issued tax invoice or retail invoices, has failed to account for the said invoices in his books of account;
- (e) holds or accepts or furnishes or causes to be furnished a declaration, which he knows or has reason to believe to be false;
- (f) who has been required to furnish security under section 28, but has failed to furnish such security;
- (g) has been convicted of an offence under this Act, or under the earlier law;
- (h) discontinues his business and has failed to furnish information regard ing such discontinuation, or
- (i) without entering into a transaction of sale issues to another dealer tax invoice, retail invoice; bill or cash memorandum with the intention to defraud the Government revenue.

the Commissioner may at any time, for reasons to be recorded in writing and after giving the dealer an opportunity of being heard, cancel his certificate of registration from such date as may be specified by him.

- (6) Every person whose registration is cancelled under sub-section (5) shall pay in respect of every taxable goods held as stock on the date of cancellation an amount equal to the tax that would be payable in respect of the goods if the goods were sold at fair market price on that date or the total tax credit previously claimed in respect of such goods, whichever is higher.
- (7) If an order of cancellation passed under this section is set as de as a result of an appeal or other proceedings under this Act, the certificate of registration of the dealer shall be restored and he shall deemed to be treated as if his registration was not cancelled.

(8) Every dealer who applies for cancellation of registration shall surrender with his application the certificate of registration granted to him and every dealer whose registration is cancelled otherwise than on the basis of his application shall surrender the certificate of registration within seven days from the date of communication to him of the order of cancellation:

Provided that if a dealer is unable to surrender the certificate of registration on account of loss, destruction or defacement of such certificate, such dealer shall intimate the registering authority accordingly within seven days from the date of communication of order of cancellation of registration.

- (9) If a dealer -
- (a) fails without sufficient cause to comply with the provisions of sub-section (2); or
- (b) fails to surrender his certificate of registration as provided in sub-section (8).

the Commissioner may, by an order in writing and after giving the dealer an opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum equal to rupees one hundred for every day of default.

- (10) Cancellation of a certificate of registration shall not affect the liability of any dealer to pay tax, penalty or interest due for any period till the date of such cancellation and which has remained unpaid or is assessed thereafter.
- (11) The Commissioner shall publish in the manner as may be prescribed the particulars of dealers whose certificate of registration has been cancelled under the provisions of this Act.
- 28. (1) Where it appears necessary to the authority to which an application is made under section 21 or 22 for issue of certificate of registration, so to do for the proper realization of the tax, penalty and interest payable under this Act, it may by an order in writing and for the reasons to be recorded therein, impose as a condition for the issue of certificate of registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order, such security as may be specified in the order for the aforesaid purpose.
- (2) Where it appears necessary to the authority referred to in section 21, or the Commissioner so to do for the croper realization of the tax, interest and penalty payable or which has become due for payment, for any period of any year, he may, at any time, by an order in writing and for reason to be recorded therein, require a registered dealer to furnish in the prescribed manner and within such time as may be specified in the order, such security or if such dealer has already furnished any security, such additional security as may be specified in the order.
- (3) No dealer shall be required to furnish any security under sub-section (1) or any security or additional security under sub-section (2) unless he has been given an opportunity of being heard.
- (4) The amount of security, which a dealer may be required to furnish under sub-section (1) or sub-section (2), or the aggregate of the amount of such

Security from certain class of dealers.

security, and the amount of additional security which he may be required to turnish under sub-section (2) by the authority referred to therein or the Commissioner, shall not exceed the amount of tax, interest and penalty payable or which has become due for payment for a period of any year according to the estimate of the authority referred to in sub-section (1) or the Commissioner, on the turnover of sales or turnover of purchase of goods of such dealer for any period of any year.

- (5) Where the security furnished by a dealer under sub-section (1) or sub-section (2) is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority referred to in sub-section (1) or sub-section (2) or, as the case may be, the Commissioner and shall within ninety days of such occurrence, furnish a fresh security for the same amount as that of the bond in the form of a bond or in any other prescribed manner.
- (6) The authority referred to in sub-section (1) or sub-section (2) or, as the case may be, the Commissioner may, by order and for good and sufficient cause, forfeit the whole or any part of the security furnished by a dealer for realizing any amount of the tax, interest or penalty payable by the dealer:

Provided that no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.

- (7) Where by reason of an order under sub-section (6), the security furnished by any dealer is rendered insufficient, he shall make up the deficiency in such manner and within such time as may be prescribed.
- (8) The authority referred to in sub-section (1) or sub-section (2) or, as the case may be, the Commissioner may, on an application made by a dealer in that behalf, make an order of refund of any amount or part thereof deposited by the dealer by way of security or for the release of bond under this section, if it is not required for the purpose of realization of tax, interest or penalty.
- (9) Where a dealer fails to furnish security as required under sub-section (1), (2), (5) or (7), the authority referred to in section 21 shall refuse to issue or, as the case may be, shall cancel the certificate of registration:

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Provided that the refusal or cancellation of a certificate of registration under this sub-section shall, notwithstanding anything contained in sub-section (3) of section 3, not affect the liability of the dealer to pay the tax, penalty and interest due for any period before or after the date of such refusal or cancellation of the certificate of registration; and accordingly the provisions of this Act shall continue to apply.

CHAPTER V.

RETURNS, PAYMENT OF TAX, ASSESSMENT, RECOVERY OF TAX AND REFUND.

Returns.

(1) Every Registered dealer shall furnish correct and complete returns in such form, for such period, by such dates and to such as therity, as may be prescribed.

- (2) The Commissioner may, subject to such terms and conditions as may be prescribed, exempt any dealer from furnishing returns or permit any dealer, -
 - (a) to furnish for such different periods, or
 - (b) to furnish separate returns relating to various places of business of a dealer in the State for the said period, or for such different period, to such authority, as he may direct.
- (3) If the Commissioner has reason to believe that the total turnover of any dealer is likely to exceed the thresholds of turnover specified in sub-section (1) of section 3, he may, by notice served in the prescribed manner, require such dealer to furnish returns as if he were a registered dealer, but no tax shall be payable by such dealer, unless he become liable to pay tax under sub-section (1) of section 3.
- (4) If any dealer having furnished returns under sub-section (1) or (3) discovers any mistake, error, omission or incorrect statement therein, he may furnish a revised return before the expiry of three months next following the last date prescribed for furnishing the original return.
- (5) If a registered dealer or any other dealer required to furnish return under this section fails to furnish any return by the prescribed date as required under sub-section (1) or fails to comply with the requirement of notice issued under sub-section (3), the Commissioner shall direct him to pay, in addition to any tax and interest payable or paid by him, by way of penalty a sum of rupees one hundred per month or part thereof for the default period. The penalties specified under this sub-section shall be imposed by the Commissioner notwithstanding the fact that the assessment proceedings have not been initiated against the dealer under section 32, 33 or 34. Any penalty imposed under this sub-section shall be without prejudice to any prosecution for any offence under this Act.
- 30. (1)Tax shall be paid in the manner hereinafter provided, and at such intervals as may be prescribed.
- (2) Every registered dealer furnishing return as required by sub-section (1) of section 29 shall pay into a Government treasury, in the manner prescribed, the whole amount due from him according to such return and shall furnish along with the return a receipt showing full payment of such amount.
- (3) If the revised return furnished by a registered dealer in accordance with sub-section (4) of section 29, shows a higher amount of tax due than shown in the return earlier furnished by him, he shall pay into a Government treasury the remaining amount of tax arising from the revised return alongwith interest on delayed payment of such remaining amount, and furnish alongwith the revised return a receipt showing such payment.
- (4) If a registered dealer does not pay the amount of tax payable in accordance with the provisions of sub-section (1), (2) or (3), the Commissioner shall forthwith initiate recovery proceedings under this Act.
- (5) Where a dealer does not pay the amount of tax within the time prescribed for its payment under this section, then there shall be paid by such

Periodical payment of tax and interest on non-payment of tax. dealer for the period commencing on the date of expiry of the aforesaid prescribed time and ending on date of payment of the amount of tax, simple interest at the rate of eighteen per cent, per annum, on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period.

Collection of tax only by registered dealers.

- 31. (1) A person who is not a registered dealer shall not collect in respect of any sale of goods any amount by way of tax under this Act and no registered dealer shall make any such collection except in accordance with the provisions of this Act and the rules made thereunder.
- (2) A registered dealer who has been permitted by the Commissioner to make a lump sum payment under section 14 shall not collect from his purchaser any sum by way of tax on the sales of goods during the period the permission for lump sum tax is valid.
- (3) The tax collected and deposited under the provisions of this Act to which a dealer may be held not liable shall not be refunded to the dealer and the amount of such tax shall stand forfeited to the Government.
- (4) If any person collects any amount by way of tax in contravention of the provisions of this Act, he shall be liable to pay, in addition to any tax payable, a penalty equal to the amount so collected.

Return scrutiny and provisional assessment.

- 32. (1) Returns or revised returns furnished by the dealer in accordance with section 29 shall be subject to scrutiny by the Commissioner.
- (2) (a) If any dealer has furnished return or revised return according to which,-
 - (i) net amount of tax payable, in accordance with section 13, is nil,
 - (ii) the amount of tax credit is carried forward for subsequent return, or
 - (iii) the amount of refund is claimed there in, or
 - (iv) the dealer has claimed in his return or the revised return higher amount of tax credit than the admissible amount of tax credit, -

then, the Commissioner may, as soon as possible, provisionally assess such dealer for the period of such return or as the case may be, revised return. For the purpose of aforesaid provisional assessment, the Commissioner shall serve on such dealer in the prescribed manner a notice requiring him to explain in writing, on or before the date specified in the aforesaid notice the basis on which the dealer has furnished such returns or the revised returns. The Commissioner may, after considering such explanation provisionally assess the amount of tax due from such dealer and issue an order in the prescribed form.

- (b) If the dealer who has been served the notice under clause (a) fails to comply with requirement of clause (a), the Commissioner shall determine the amount of tax payable in the manner as may be prescribed and serve on such dealer an order of the provisional assessment.
- (3) Where a registered dealer has not furnished the return in respect of any tax period within the prescribed time, the Commissioner shall, notwith

standing anything contained in section 34, proceed to assess the dealer provisionally for the period for such default. Such provisional assessment shall be made on the basis of past returns or past records or on the basis of information received by the Commissioner and the Commissioner shall direct the dealer to pay the amount of tax assessed in such manner and by such date as may be prescribed.

- (4) Where the Commissioner has reason to believe that the dealer has evaded the tax or has claimed more amount of tax credit than the admissible amount of tax credit, he may, after taking into account all relevant materials gathered by him and after giving the dealer a notice in the prescribed form, provisionally assess to the best of his judgment the amount of tax payable by the dealer.
- (5) The provisions of this Act shall *mutatis mutandis* apply to the provisional assessment as if provisional assessment were an audit assessment made under this Act
- (6) Nothing contained in this section shall prevent the Commissioner from making assessment under sections 33 and 34.
- 33. (1) Every registered dealer shall, by such dates and to such authority as may be prescribed, furnish annual return by way of self-assessment in the prescribed form, containing such particulars and accompanied by supporting documents, as may be prescribed.

Selfassessment.

- (2) The amount of tax credit, exemptions and other claims by the dealer in the annual return for which no supporting tax invoice, declarations, certificates, or evidence required under this Act or the Central Act is furnished, shall be self-assessed by the dealer by disallowing such tax credits, exemptions and other claims and by levying the appropriate rate of tax as if the sales or purchases were taxable.
- (3) If a dealer has furnished all the returns, revised returns, if any, and annual return within the prescribed period and the Commissioner is satisfied that the returns or as the case may be, revised returns, and annual return are correct and complete, he may accept the annual return by way of self-assessment filed by the dealer and shall assess the amount of tax and interest due from the dealer on the basis of such returns. The Commissioner shall send to such dealer an intimation in the prescribed form regarding the assessment done under this section.
- 34. (1) Subject to the provisions of sub-section (2), the amount of tax due from a registered dealer shall be assessed in the manner hereinafter provided, separately for each year, during which he is liable to pay tax.

Audit assessment.

- (2) Where,
- (a) the Commissioner is not satisfied with the bonafides of any claim of tax credit, exemption, refund, deduction, concession, rebate; or genuineness of any declaration or evidence furnished by a dealer in support thereof with the self-assessment, or
- (b) the Commissioner has reason to believe that detailed scrutiny of the case is necessary,

the Commissioner may, notwithstanding the fact that the dealer may have been assessed under section 33, serve on such dealer in the prescribed manner a notice requiring him to appear on a date and place specified therein, which may be his place of business or a place specified in the notice, either to attend and produce or cause to be produced the books of account and all evidence on which the dealer relies in support of his returns or to produce such evidence as execified in the notice.

- (3) The dealer shall provide all co-operation and reasonable assistance to the Commissioner as may be required in case the proceedings under this section are required to be conducted at his place of business.
- (4) If proceedings under this section are to be conducted at the place of business of the dealer and it is found that the dealer is not functioning from such premises or no such premises exists, the Commissioner shall assess to the best of his judgment the amount of tax due from him.
- (5) If the Commissioner is unlawfully prevented from conducting the proceedings under this section, he may assess to the best of his judgment the amount of tax due from the dealer and may further direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum equal to the tax amount.
 - (6) If any dealer -
 - (a) has not furnished returns in respect of any period by the prescribed date;
 - (b) has furnished incomplete or incorrect returns for any period;
 - (c) has failed to comply with the terms of notice issued under sub-section (2);
 - (d) has failed to maintain books of accounts in accordance with the provisions of this Act or rules made thereunder or has not regularly employed any method of accounting,-

the Commissioner shall assess to the best of his judgment the amount of tax due from him.

- (7) If the Commissioner is satisfied that the dealer, in order to evade or avoid payment of tax;
 - (a) has failed to furnish, without reasonable cause, returns in respect of any period or the self-assessment by the prescribed date;
 - (b) has furnished incomplete or incorrect returns for any period;
 - (c) has availed tax credit for which he is not eligible;
 - (d) has employed such method of accounting which does not enable the Commissioner to assess the tax due from him, or
 - (e) has knowingly furnished false or incorrect self asse; sment,-

he shall, after giving the dealer an opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum equal to twice the amount of tax assessed on account of the said reason in the audit assessment.

- (8) If the Commissioner, upon information which has come into his possession, is satisfied that any dealer who has been liable to pay tax under this Act in respect of any period, has failed to get himself registered, the Commissioner shall proceed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods. In making such assessment, he shall give the dealer an opportunity of being heard. The Commissioner may, if he is satisfied that the default was without reasonable cause, direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum equal to the amount of tax assessed or a sum of rupees five thousand, whichever is more.
- (9) No assessment under sub-sections (2), (5), (6) or (7) shall be made after the expiry of four years from the end of the year in respect of which or part of which the tax is assessable.
- (10) No assessment under sub-section (8) shall be made after the expiry of eight years from the end of the year in respect of which or part of which the tax is assessable:

Provided that where any assessment is required to be made in pursuance of an order of any court or authority, such fresh assessment shall be made at any time within two years from the date of such order:

Provided further that in computing the period of limitation for the purpose this section, any period during which assessment proceedings are stayed by an order or injunction of any court or authority shall be excluded.

- (11) Any assessment made or penalty imposed under this section shall be without prejudice to prosecution for any offence under this Act.
- (12) Where in the case of a dealer, the amount of tax assessed for any period under this section or reassessed for any period under section 35 exceeds the amount of tax already paid under sub-section (1), (2) or (3) of section 30 by the dealer in respect of such period by more than twenty five per cent of the amount of tax so paid, there shall be levied on such dealer a penalty not exceeding one and one-half times the difference between the tax paid under section 30 and the amount so assessed or reassessed.
- 35. (1) Where after a dealer has been assessed under section 32, 33 or 34 for any year or part thereof, the Commissioner has reason to believe that the whole or any part of the taxable turnover of the dealer in respect of any period has,—

Turnover escaping assessment.

- (a) escaped assessment; or
- (b) been under-assessed; or
- (c) been assessed at a rate lower than the rate at which it is assessable;
- (d) wrongly been allowed any deduction therefrom; or

(e) wrongly been allowed any tax credit therein,

the Commissioner may serve a notice on the dealer and after giving the dealer an opportunity of being heard and making such inquiry as he considers necessary, proceed to determine to the best of his judgment, the amount of tax due from the dealer in respect of such turnover which comes to his notice subsequently, and the provisions of this Act shall, so far as may be, apply accordingly.

(2) No order shall be made under sub-section (1) after the expiry of five years from the end of the year in respect of which or part of which the tax is assessable;

Refund of excess payment.

36. (1) Subject to other provisions of this Act and the rules, the Commissioner may refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him:

Provided that, the Commissioner shall first apply such excess towards the recovery of any amount due under this Act or the earlier laws and shall then refund only the balance amount, if any:

Provided further that no such adjustment under the proviso shall be made towards a recovery of an amount due that has been stayed by an appellate authority.

(2) Where any refund is due to any dealer, according to the return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due and payable as per the returns furnished under section 29 for any subsequent period in the year:

Provided that the amount of tax, or penalty, interest or surety forfeited or all or any of them due from and payable by the dealer on the date of such adjustment, shall first be deducted from such refund before making the adjustment.

Provisional refund.

- 37. (1) If a registered dealer has filed any return as required by or under this Act, and such return shows any amount to be refundable to the dealer, then the dealer may apply in such form and in such manner as may be prescribed, to the Commissioner for grant of provisional refund pending assessment.
- (2) Subject to the provisions of sub-section (3), the Commissioner may require the aforesaid dealer to furnish a Bank Guarantee or other security as may be prescribed, for an amount equal to the amount of refund. On receipt of such guarantee or other security, the Commissioner may, subject to rules, grant provisional refund to the dealer.
- (3) The Commissioner may direct that assessment under section 32 of such dealer in respect of the period covered by the said return be taken up as early as practicable and adjust the grant of provisional refund against tax due, if any, as a result of the assessment.
- (4) If, on assessment, the provisional refund granted under sub-section(2) is found to be in excess, then such excess shall be recovered as if it is a tax due from the dealer under this Act and the interest on such tax shall be charged

at the rate of eighteen percent per annum, for the period from the date of grant of provisional refund, till the date of assessment

Where refund of any amount of tax becomes due to the dealer by virtue . Interest on of an order of assessment under section 34, he shall subject to the provision of this section be entitled to receive in addition to the amount of tax, simple interest at the rate of six per cent per annum on the said amount of tax from the date immediately following the date of the closure of the accounting year to which the said amount of tax relates to the date of order of assessment:

Provided that where the dealer has paid any amount of tax after the closure of the accounting year and such amount is required to be refunded, no interest shall be payable for the period from the date of closure of such accounting year to the date of payment of such amount.

(2) A registered dealer entitled to refund in pursuance of any order other than referred to under sub-section (1) or in pursuance of any order by any court, shall subject to rules, be entitled to receive, in addition to the refund, simple interest at the rate of six per cent for the period commencing after thirty days from the date of such order till the date of payment of amount of such refund. The interest shall be calculated on the amount of refund due after deducting therefrom any tax, interest, penalty or any other dues under this Act or under the Central Act. If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced, such interest shall be enhanced or reduced accordingly:

Provided that where the amount becomes refundable by virtue of an order of the appellate authority or revision authority or of a court, the interest under the provisions of this section shall be payable from the date immediately following the expiry of the period of thirty days from the date of receipt of the order of the appellate authority or revision authority or the court, by the officer whose order forms the subject matter of the proceedings before the appellate authority or revisional authority or the court to the date of refund.

Explanation 1 .- For the purposes of this section, where the refund of tax, whether full or in part, includes refund of any amount of tax paid after the date prescribed for making the last payment of any period covered by the return, then the interest, in so far as it relates to the refund arising from such payment, shall be calculated from the date of such payment to the date of such order.

Explanation 2.—If the delay in granting the refund within the period of thirty days aforesaid is attributable to the said dealer, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which the interest is payable.

Explanation 3.— Where the refund of a sum deposited as a pre-condition for entertainment of appeal under sub-section (4) of section 73 becomes due on account of appeal being decided in dealer's favour, the 'date of order' for the purposes of this section shall be-

(a) in the case where the case has been remanded by the appellate authority, the date of the order made in pursuance of the order of the appellate authority; and

- (b) in any other case, the date of the order of the appellate authority.
- (2) Where the realization of any amount remains stayed by the order of any court or authority and such order is subsequently vacated, interest shall be payable also for any period during which such order remained in operation.

Power to withhold refund in certain cases.

- 39. (1) Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue, he may, after giving the dealer an opportunity of being heard, withhold the refund till such time as he may determine.
- (2) Where a refund is withheld under sub-section (1), the dealer shall be entitled to interest as provided under section 38, if as a result of the appeal or further proceeding he becomes entitled to refund.

Refund of tax for certain categories.

- 40. (1) Subject to such terms and conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the official gazette, authorize the Commissioner to grant refund of the amount of tax separately charged by any registered dealer to any class of persons who have purchased the goods from such dealer.
- (2) Every notification issued under sub-section (1) shall be laid for not less than thirty days before the State Legislature as soon as possible after it is issued and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make, during the session in which it is so laid or session immediately following. Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette* and shall thereupon take effect.
- (3) Any person, so entitled for refund under sub-section (1) may apply to the prescribed authority in the manner and within the time as may be prescribed. The Commissioner shall subject to provisions of this Act grant such refund to such person.

Remission of tax, penalty or interest.

- 41. (1) Subject to such conditions as it may impose, the State Government may, if it is necessary so to do in the public interest in case of double taxation or to redress an inequitable situation, remit by an order either generally or specially, the whole or any part of the tax, penalty or interest payable in respect of any period by any dealer or a class of dealers or of any specified class of sales or purchase.
- (2) The Commissioner may, in such circumstances and subject to such conditions and within such limit as may be prescribed remit the whole or any part of the tax, penalty or interest payable, in respect of any period, by any dealer.

Payment and recovery of tax and inferest on delayed payment. 42. (1) The amount of tax assessed, reassessed or becoming payable for any period under section 32, 33, 34, 35, 75 or 79, less any amount already paid by the dealer in respect of such period, shall together with penalty and interest if any that may become payable under any of the provisions of this Act, be paid by the dealer or the person liable therefor into a Government treasury or in such other manner as may be prescribed within thirty days from the date of service of notice of demand issued by the Commissioner for this purpose.

- (2) On an application by the dealer, the Commissioner may in respect of any particular dealer or person and for reasons to be recorded in writing, extend the time for payment or allow payment by installments, subject to such conditions as he may think fit to impose in the circumstances of the case.
- (3) In a case where payment by installments is allowed under subsection (2) and the dealer or the person liable for such payment commits default in paying any one of the installments within the time fixed by the Commissioner under that sub-section, the dealer or the person shall be deemed to be in default in respect of the whole of the amount then outstanding and the other installments shall be deemed to have been due on the same date as the installment in default.
- (4) Interest at the rate of eighteen per cent per annum shall be charged for the period as may be extended or the installments as may be granted under sub-section (2).
- (5) If the amount of tax and penalty, if any, is not paid within the time specified in sub-section (1) or extended under sub-section (2), as the case may be, the dealer or the person liable therefor shall be deemed to be in default in respect of that amount.
- (6) Where the amount of tax assessed or reassessed for any period, under section 34 or section 35, subject to revision, if any, under section 75, exceeds the amount of tax already paid by a dealer for that period, there shall be paid by such dealer, for the period commencing from the date of expiry of the time prescribed for payment of tax under sub-section (1), (2) or (3) of section 30 and ending on date of order of assessment, reassessment or, as the case may be, revision, simple interest at the rate of eighteen per cent per annum on the amount of tax not so paid or any less amount thereof remaining unpaid during such period.
- (7) Where a dealer does not pay the amount of tax falling under subsection (1) on or before the prescribed date, then there shall be paid by such dealer for the period commencing on the specified date and ending on the date of payment, simple interest at the rate of eighteen per cent per annum on the amount of tax not so paid or any less amount thereof remaining unpaid during such period:

Provided that where security, other than in the form of surety bond, has been furnished by a dealer under sub-sections (1) and (2) of section 28, the Commissioner may, for good and sufficient reasons to be recorded in writing, realise any amount of tax, penalty or interest remaining unpaid as aforesaid or part thereof by ordering forfeiture of the whole or any part of the security.

43. (1) Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act (hereinafter in this section referred to as "Government dues") is served upon any dealer and any appeal, revision application is filed or other proceeding is initiated in respect of such Government dues, then -

Continuation of certain recovery proceedings.

(a) where such Government dues are enhanced in such appeal, revision or other proceeding, the Commissioner shall serve upon the dealer another notice of demand only in respect of the amount by which such Government dues are enhanced and any recovery proceeding in relation to such Government dues as

are covered by the notice of demand served upon him before the disposal of such appeal, revision application or proceeding may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

- (b) where such Government dues are reduced in such appeal, revision or in other proceeding—
- (i) it shall not be necessary for the Commissioner to serve upon the dealer a fresh notice of demand;
- (ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceeding is pending;
- (iii) any recovery proceedings initiated on the basis of the notice of demand served upon him prior to the disposal of such appeal, revision application or other proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Special mode of recovery.

- 44. (1) Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last known address, require,—
 - (a) any person from whom any amount of monies is due, or may become due, to a dealer on whom notice has been served under sub-section (1), or
 - (b) any person who holds or may subsequently hold monies for or on account of such dealer,

to pay to the Commissioner, either forthwith upon the monies becoming due or being held or within the time specified in the notice (but not before the monies becomes due or is held as aforesaid) so much of the monies as is sufficient to pay the amount due by the dealer in respect of the arrears of tax, penalty or interest under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation.—For the purposes of this sub-section, the amount of monies due to a dealer from, or monies held for or on account of a dealer by any person, shall be calculated by the Commissioner after deducting therefrom such claims, if any, lawfully subsisting, as may have fallen due for payment by such dealer to such person.

- (2) The Commissioner may amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.
- (3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer, and the receipt thereof by the Commissioner shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount specified in the receipt.
- (4) Any person discharging any liability to the dealer after receipt of the notice referred to in this section, shall be personally liable to the Commissioner

to the extent of the liability discharged or to the extent of the liability of the dealer for tax, penalty and interest, whichever is less.

- (5) Where a person to whom a notice under this section is sent objects to it by a statement in writing that the sum demanded or any part thereof is not due or payable to the dealer or that he does not hold any monies for or on account of the dealer, the Commissioner shall hold an inquiry and after giving to such person or dealer a reasonable opportunity of being heard, make such order as he thinks fit.
- (6) Any amount of monies which the aforesaid person is required to pay to the Commissioner, or for which he is personally liable to the Commissioner under this section shall, if it remains unpaid, be recoverable as an arrears of land revenue.
- (7) The Commissioner may apply to the court in whose custody there is monies belonging to the dealer for payment of the amount of such monies towards the outstanding amount of tax, interest and penalty payable by the dealer.
- **45.** (1) Where during the pendency of any proceedings of assessment or reassessment of turnover escaping assessment, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may by order in writing attach provisionally any property belonging to the dealer in such manner as may be prescribed.

Provisinal attachment.

- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under subsection (1).
- **46.** (1) For the purpose of effecting recovery of the amount of tax, penalty or interest due from any dealer or other person by or under the provisions of this Act or under any earlier law, as arrears of land revenue –

Special powers of tax authorities for recovery of tax as arrears of land revenue.

- (i) the Commissioner, the Special Commissioner, Additional Commissioner and the Joint Commissioners shall have and exercise all the powers and perform all the duties of the Collector under the Bombay Land Revenue Code, 1879.
- (ii) the Deputy Commissioners and Assistant Commissioners shall have and exercise all the powers (except the powers of arrest and confinement of a defaulter in a civil jail) and perform all the duties of the Assistant Collector or Deputy Collector under the said Code.
- (iii) the Commercial Tax Officers shall have and exercise all the powers (except the powers of arrest and confinement of a defaulter in a civil jail) and perform all the duties of the Mamlatdar under the said Code.
- (2) Every order passed in exercise of the powers conferred by subsection (1) shall, for the purpose of section 73, 75, 78, 79 or 94, be deemed to be an order passed under this Act.

Bom. V of 1879. Transfer to defraud revenue void.

47. Where a dealer after any tax has become due from him creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever of any of his property in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the dealer.

Tax to be first charge on property. 48. Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case may be, such person.

CHAPTER VI

LIABILITY TO PAY TAX IN CERTAIN CASES.

Applicability of the Act or earlier law to other persons liable to pay tax. Where in respect of any tax, interest or penalty due from a dealer under this Act or under any earlier law, any other person is liable for the payment thereof under any provisions of this Act or earlier law, all the relevant provisions of this Act or, as the case may be, of the earlier law shall, in respect of such liability apply to such person also, as if he were the dealer himself:

Liability of commission agent and principal.

- **50.** (1) Where a commission agent purchases or sells any taxable goods on behalf of his principal, such commission agent and his principal shall be jointly and severally liable to pay the tax payable under the Act.
- (2) If the commission agent shows to the satisfaction of the Commissioner, in the manner as may be prescribed, that the tax payable by him under this Act in respect of any goods, has been paid by the principal on whose behalf the goods were purchased, the commission agent shall not be liable to pay the tax again in respect of the same transaction.
- (3) If the principal, on whose behalf commission agent has sold the goods, shows to the satisfaction of the Commissioner, in the manner as may be prescribed, that the tax payable under this Act in respect of any goods, has been paid by his commission agent, the principal shall not be liable to pay the tax again in respect of the same transaction.

Liability in case of transfer of business.

- 51. (1) Where a dealer, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and licence, hire or in any other manner whatsoever, the dealer and the person to whom the business is so transferred shall jointly and severally be liable to pay the tax, interest or any penalty due from the dealer up to the time of such transfer, whether such tax, interest or penalty has been assessed before such transfer, but has remained unpaid or is assessed thereafter.
- (2) Where the transferee or the lessee of a business referred to in subsection (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the sale of goods effected by him with effect from the date of such transfer and shall, if he is an existing dealer, apply within the prescribed time for amendment of his certificate of registration.

52. (1) When two or more companies are amalgamated by the order of court or of the Central Government and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have sold or purchased any goods to or from each other during the period commencing on the date from which the order is to take effect and ending on the date of the order, then such transactions of sale and purchase shall be included in the turnover of sale or purchase of the respective companies and shall be assessed to tax accordingly.

Amalgmation of companies.

(2) Notwithstanding anything contained in the said order, for all the purposes of this Act, the said two or more companies shall be treated as distinct companies for all the periods upto the date of the said order and the registration certificates of the said companies shall be cancelled, where necessary, with effect from the date of the said order.

1 of 1956.

Explanation.— Words and expressions used in this section but not defined shall have the respective meanings assigned to them in the Companies Act, 1956.

53. (1) Every person-

Liability in case of company in liquidation.

- (a) who is a liquidator of any company which is being wound up whether under the orders of a court or otherwise; or
- (b) who has been appointed as receiver of any assets of a company (hereinafter referred to as the "liquidator"),

shall, within thirty days after his appointment, give intimation of his appointment as such to the Commissioner.

- (2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he received intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
- (3) When any private company is wound up and any tax, interest or penalty assessed under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall jointly and severally be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery is be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Explanation.—For the purposes of this section, the expressions "company" and "private company" shall have the meaning respectively assigned to them under clauses (i) and (ii) of sub-section (1) of section 3 of the Companies Act, 1956.

1 of 1956.

54. Notwithstanding any contract to the contrary, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall jointly and severally be liable for such payment:

Liability of partners of firm to pay tax.

Provided that where any partner retires from the firm, he shall intimate the date of his retirement to the Commissioner by a notice in that behalf in writing and he shall be liable to pay tax, interest or penalty remaining unpaid at the time of his retirement and any tax, interest or penalty due up to the date of his retirement whether assessed or not assessed, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

Liability of guardians trustees etc.

55. Where the business in respect of which tax is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be assessed upon and recoverable from any such minor or other incapacitated person, as if he were major and capacitated person and if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

Liability of courts of Wards etc.

56. Where the estate or any portion of the estate of a dealer owning a business in respect of which tax is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager as he case may be, in like manner and to the same extent as it would be assessed upon and be recoverable from the dealer as if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

Special provision regarding liability to pay tax in certain cases

- 57. (1) Where a person who is or has been a dealer, liable to pay tax under this Act, dies, then-
 - (a) if a business carried on by the dealer is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such dealer under this Act or under any earlier law, and
 - (b) if the business carried on by the dealer is discontinued, whether before or after his death, his legal representative shall be liable to pay out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, penalty or interest due from such dealer under this Act or under any earlier law,-

whether such tax interest or penalty has been assessed before his death but has remained unpaid or is assessed after his death.

(2) Where a dealer, liable to pay tax under this Act, is a Hindu Undivided Family and the property of the Hindu Undivided Family is partitioned amongst the various members or groups of members then each member or group of members shall jointly and severally be liable to pay the tax, interest or penalty due from the dealer under this Act or under any earlier law upto the time of the

partition whether such tax, penalty or interest has been assessed before partition but has remained unpaid or is assessed after the partition.

- (3) Where a dealer, liable to pay tax under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable under section 54 the tax, interest or penalty due from the firm under this Act or under any earlier law, upto the time of dissolution whether such tax, interest or penalty has been assessed before the dissolution, but has remained unpaid or is assessed after dissolution.
 - (4) Where the dealer liable to pay tax under this Act,-
 - (a) is the guardian of a ward se behalf the business is carried on by the guardian, or
 - (b) is a trustee who carries on the business under a trust for a beneficiary,

then if the guardianship or trust is terminated, the ward or, as the case may be, the beneficiary shall be liable to pay the tax, interest or penalty due from the dealer upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been assessed before the termination of guardianship or trust but has remained unpaid or is assessed thereafter.

- (5) Where a person becomes liable to pay tax in the manner described in clause (a) of sub-section (1), then such person shall, (notwithstanding anything contained in section 3), be liable to pay tax on the sales of goods made by him on and after the date of such succession or transfer and shall (unless he already holds a certificate of registration) in the case of succession, within six months and in the case of transfer, within thirty days, thereof apply for registration.
- 58. (1) Where a dealer is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business—

Liability in other cases.

- (a) the tax payable under this Act, by such firm, association or family up to the date of such discontinuance may be assessed as if no such discontinuance had taken place; and
- (b) every person who was at the time of such discontinuance, a partner of such firm, or a member of such association or family, shall, notwith-standing such discontinuance be liable jointly and severally for the payment of tax assessed and penalty or interest imposed and payable by such firm, association or family, whether such tax, interest or penalty or has been assessed prior to or after such discontinuance, and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a dealer:
- (2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after its reconstitution, shall, without prejudice to the provisions of section 54, jointly and severally be liable to pay tax, interest and penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the dealer, being a firm or association of persons is dissolved or where the dealer, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or, as the case may be, to partition.

Service of notice in certain circumstances.

- 59. (1) Where a Hindu Undivided Family has been partitioned, notice under this Act shall be served on the person who was the last manager of the Hindu Undivided Family, or if such person cannot be found, then on all adults who were members of the Hindu Undivided Family, immediately before the partition.
- (2) Where a firm or an association of persons is dissolved, notice under this Act may be served on any person who was a partner (not being a minor) of the firm, or member of the association, as the case may be, immediately before its dissolution.
- (3) Where the business of a firm, an association of persons or company has been discontinued, a notice under this Act shall be served in the case of a firm or an association of persons on any person who was a member of such firm or association at the time of its discontinuance and in the case of a company, on the principal officer thereof.

CHAPTER VII

ACCOUNTS AND RECORDS

Invoices.

60. (1) A registered dealer who sells taxable goods to another registered dealer, shall, at the request of the purchaser, provide to him, at the time of sale, with a tax invoice containing such particulars as may be prescribed and retain a copy thereof:

Provided that a tax invoice shall not be issued by a dealer-

(a) in respect of the goods specified in Schedule I or exempt by notification under sub-section (2) of section 5;

- (b) who has given an option to pay lumpsum tax in lieu of tax under section 14;
- (c) for sale in the course of inter-State trade or commerce or export out of the territory of India: or
- (d) to a person who is not a registered dealer.

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(2) Except when tax-invoice is issued under sub-section (1), if a registered dealer sells any goods exceeding rupees one hundred in value in any one transaction to any person, he shall issue to the purchaser a retail invoice, containing such particulars as may be prescribed and retain a copy thereof.

Credit and debit notes.

61. Subject to the provisions of sections 8 and 60, where a tax invoice has been provided as contemplated in sub-section (1) of section 60, and

- (a) the amount shown as tax charged in the tax invoice exceeds the actual tax charged in respect of the sale concerned, the seller shall provide the purchaser with a credit note within three months of the sales of goods involved in the transaction, containing such particulars as may be prescribed:
- (b) the actual tax charged in respect of the sale concerned exceeds the tax shown in the tax invoice as charged, the seller shall provide the purchaser with a debit note, containing such particulars as may be prescribed:

Provided that -

- (i) not more than one credit note or, as the case may be, debit note shall be issued for the amount in excess;
- (ii) no credit note shall be issued for the amount in excess which arises when the purchaser avails of the discount offered by the seller.
- **62.** (1)Every dealer liable to pay tax under this Act, and every other dealer on whom a notice has been served to furnish returns under sub-section (2) of section 29 shall maintain at his place of business a true account of the value of goods purchased, sold, supplied and delivery of goods made by him in such form and in such manner as may be prescribed.

(2) If the Commissioner considers that such account is not sufficiently clear and intelligible to enable him to make a proper scrutiny of the returns referred to in section 29, he may require such dealer by notice in writing to keep such accounts (including records of purchases and sales) in such form and in such manner as may be specified therein.

(3) The Government may, direct any class of registered dealers generally to keep such accounts (including records of purchases and sales) in such manner as may be prescribed.

63. (1) If in respect of any particular year, total turnover of a dealer exceeds rupees one crore, then such dealer shall get his accounts verified and audited by a specified authority within one year from the end of that year and obtain within that period a report of such audit in the prescribed form duly signed and verified by such specified authority alongwith such particulars as may be prescribed. A true copy of such report shall be furnished by such dealer to the Commissioner within such period as may be prescribed.

Accounts to be audited in certain cases.

Accounts.

Explanation.— For the purposes of this section, "specified authority" means,-

38 of 1949.

1 of 1956.

23 of 1959.

(i) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 and includes persons who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of companies;

(ii) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;

(iii) a legal practitioner or a Sales Tax Practitioner whose name is entered in the list maintained by the Commissioner in accordance with the provisions of section 81. (2) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a true copy of such report within the prescribed time, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, impose on him, in addition to any tax payable, a sum by way of penalty not exceeding rupees ten thousand, as he may determine.

Preservation of records.

64. The dealer shall preserve his books of accounts and the records relevant for the purpose of this Act till the period of eight years from the end of the accounting year to which the books of accounts and the records relate.

CHAPTER VIII.

LIABILITY TO PRODUCE ACCOUNTS AND SUPPLY OF INFORMA-I

Dealer to declare the name of manager of business. 65. Every registered dealer shall within the period prescribed, file a declaration in the manner prescribed stating the name of the person or persons who shall be deemed to be the manager or managers of business of such dealer, for the purposes of this Act and in the event of change of manager, the dealer shall revise the declaration within thirty days from the date of such change.

Dealer to declare details of bank accounts. **66.** Every dealer, who is liable to pay tax shall send a declaration in such form, within such period and to such authority as may be prescribed, stating therein the particulars of the Bank accounts operated by him in connection with his business and shall within the period prescribed, intimate to the authority the changes in the particulars in the declaration.

Production and inspection of accounts and documents and search of premises.

- 67. (1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer or any other person
 - (a) to produce before him such books of account, registers or documents;
- (b) to furnish such information relating to the stock of goods, purchases, sales, deliveries of goods by the dealers or any other information relating to his business,

as may be deemed necessary, for the purposes of this Act.

- (2) All books of accounts, registers and documents relating to the stock of goods, purchases, sales and deliveries of goods by any dealer; and all goods kept in any place of business or warehouse of any dealer, or at any other place for and on behalf of a dealer, shall at all reasonable time be open to inspection by the Commissioner. The Commissioner may take or cause to be taken such copies or extracts of the said books of account, registers or documents and such inventory of the goods found as appear to him necessary for the purposes of this Act.
 - (3) Where the Commissioner, has reason to believe that—
- (a) any person to whom a notice under this Act was issued to produce or cause to be produced, any books of account or other documents has failed to produce or cause to be produced such books of account or other documents as required by such notice; or

- (b) any person to whom a notice as aforesaid has been or might be issued, will not, or would not, produce or cause to be produced any books of account or other documents which will be useful for, or relevant to, any proceeding under the earlier law or under this Act; or
- (c) books of account, registers or documents of any dealer may be destroyed, mutilated, altered, falsified or any sale or purchase by that dealer have been or may be suppressed, or any goods have not been or may not be accounted for in the books of account, registers or other documents required to be maintained under this Act, with a view to evade or attempt to evade payment of tax due under the earlier law or under this Act,-

the Commissioner or any other person appointed under sub-section (2) of section 16 if so authorised by him, may,-

- (i) enter and search any building or place where he has reason to suspect that the books of account and other documents or the goods or the sale proceeds are kept;
- (ii) break open the lock of any door, box, locker, safe, or other receptacle for exercising the powers conferred by sub-clause (i) where the keys thereof are not available;
- (iii) seize any such books of account or other documents or any inventory of goods or any goods as appear to him necessary for the purposes of this Act:
- (iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;
- (v) make a note or any inventory of any such money or goods found as a result of such search or place marks of identification on such goods;
- (vi) seal the premises including the office, shop, godown, box, locker, safe, almirah or other receptacle if the owner or the person in occupation or incharge of such office, shop, godown, box, locker, safe, almirah or other receptacle leaves the place or is not available or fails or refuses to open it when called upon to do so, or causes or attempts to cause obstruction to the Commissioner or the authorised officer in the discharge of his duties under this section.
- (4) The Commissioner may requisition the services of any police officer or any public servant, or of both to assist him for all or any of the purposes specified in sub-section (3).
- (5) Where the Commissioner seizes any books of account or other documents or any goods, he shall give the dealer or the person present on his behalf a receipt for the same and obtain acknowledgement of the receipt so given to him:

Provided that if the dealer or person from whose custody the books of account or other documents or the goods are seized refuses to give an acknowledgement, the Commissioner may leave the receipt at the premises and record the fact:

- (6) Where it is not feasible to seize the accounts or other documents or the goods under sub-section (3), the Commissioner or the authorised officer, may serve on the owner or the person who is in immediate possession or control thereof, an order that he shall not remove or part with or otherwise deal with them except with the previous permission of the Commissioner or such authorized officer.
- (7) The Commissioner shall keep in his custody the books of account, registers or documents seized under sub-section (3) for such period not later than the completion of all the proceedings under this Act in respect of the years for which those books of account, registers or documents are relevant, as he considers necessary, and thereafter shall return the same to the dealer or any other person from whose custody or power they were seized:

Provided that the Commissioner may, before returning such books of account or other documents as aforesaid, place or cause to be placed such marks of identification thereon as appear to him to be necessary:

Provided further that the Commissioner may, before returning the books of account and other documents, require that the dealer or the person, as the case may be, shall give written undertaking that the books of account and other documents shall be presented whenever required by any competent authority for any proceedings under this Act.

(8) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

2 of 1974.

- (9) The Commissioner may, for the purposes of this Act,—
- (a) require any person, including a banking company, post office or any officer thereof, to furnish information in relation to such matters or to furnish statements of accounts and affairs verified in the manner specified by him, giving information in relation to such points or matters as in his opinion will be useful for, or relevant to, any proceeding under this Act;
- (b) require any person—
- (i) who transports or holds in custody, for delivery to or on behalf of any dealer any goods to give any information likely to be in his possession in respect of such goods or to permit inspection thereof, as the case may be;
- (ii) who maintains or has in his possession any books of account, registers or documents relating to the business of a dealer to produce such books of account, registers or documents for inspection.
- (10) If any person, who transports or holds in custody for delivery to or on behalf of any dealer any goods, on being required by the

Commissioner under sub-clause (i) of clause (b) of sub-section (9) so to do, fails to furnish the information likely to be in his possession in respect of such goods or fails to permit inspection thereof the Commissioner may pass an order of detention or seizure of goods in his custody or possession in respect of which the default is committed.

- (11) The order of detention or seizure passed under sub-section (10) shall remain in force so long as the person concerned does not furnish information required under sub-clause (i) of clause (b) of sub-section (9) or make proper arrangement for inspection of the goods under the said subsection.
- (12) If any person, who transports or holds in custody for delivery to or on behalf of any dealer any goods, on being required by the Commissioner under sub-clause (i) of clause (b) of sub-section (9) so to do, fails to give any information likely to be in his possession in respect of such goods or fails to permit inspection thereof without prejudice to any other action which may be taken against such person, a presumption may be raised that the goods in respect of which he has failed to furnish information or permit inspection, were meant for sale by him and he is a dealer liable to pay tax under this Act and the provisions of this Act shall apply accordingly.
- (13) If any person commits default under clause (a) or sub-clause (ii) of clause (b) of sub-section (9), the Commissioner may, without prejudice to any other action which may be taken against such person under any other provision of this Act, direct, after giving an opportunity of being heard to such person that such person shall pay by way of penalty a sum not exceeding rupees fifty thousand.
- (14) If the Commissioner is satisfied that any person on being required by him so to do, has failed to furnish the information in respect of the goods in his custody for delivery to or on behalf of any dealer or to permit inspection thereof under sub-clause (i) of clause (b) of sub-section (9), the Commissioner may, by order in writing and after giving opportunity of being heard to such person, impose by way of penalty a sum not exceeding the amount of tax leviable under this Act on the goods in respect of which the default was committed.
- (15) Where an order of detention or seizure of goods is made under the provisions of this section, the Commissioner or the officer authorised in this behalf may release the goods on such person exercising the option of paying by way of penalty such sum as may be directed, not exceeding two and a half times the amount of tax leviable on such goods under this Act.
- (16) Where any premises including the office, shop, godown, box, locker, safe or other receptacle have been sealed under sub-section (3), the Commissioner, on an application made by the owner or the person in occupation or in-charge of such shop, godown, box, locker, safe, or other receptacle, may order de-sealing thereof on such terms and conditions, including furnishing of security for such sum in such form and manners as may be prescribed.
- (17) Where an order of detention or seizure of goods is made under this section and no claim is lodged by any person with respect to such goods within a period of three months from the date of such order, the Commissioner may, by order in writing, direct the auction of such goods:

Provided that if the goods, in respect of which an order of detention or seizure is made, are of a perishable nature or subject to speedy and natural decay or when the expenses of keeping them in custody are likely to exceed their value, the same may be ordered to be auctioned as soon as it is practicable soon after an order of detention or seizure of such goods is made and the amount so realised by the auction of goods shall be remitted in the Government treasury immediately.

- (18) Where an order imposing penalty is passed under sub-section (14) or an option of paying penalty is exercised under sub-section (15) and the person liable fails to pay the penalty within the prescribed period, the goods detained or seized may be sold by public auction and the sale proceeds deposited immediately in Government treasury.
- (19) Auction of goods to be made under sub-section (17) or subsection (18) shall be carried out in the manner as may be prescribed.
- (20) Any person entitled to the sale proceeds of goods auctioned under the provisions of this section shall, on application made to the Commissioner and upon sufficient proof, be paid the sale proceeds of the goods auctioned, after deducting therefrom the expenses of the sales and other incidental charges and the amount of tax, interest and penalty leviable under this Act.

Inspection of goods in transit, etc.

- (1) If the State Government considers that with a view to preventing evasion of tax in any place or places in the State, it is necessary to so do; it may. by notification in the Official Gazette, direct that such number of check-posts shall be set up or such number of barriers shall be erected at such places as may be specified in the notification,
- (2) At every check-post or barrier set up or erected under sub-section (1), the driver or any other person in-charge of any vehicle, boat or animal shall stop the same, and keep it stationary so long as may reasonably be necessary. and allow the officer-in-charge of the check-post or barrier to examine the contents in the vehicle or boat or on the animal and inspect all records relating to the goods carried in the vehicle or boat or on the animal which are in the possession of such driver or other person in-charge who shall, if so required. give his name and address and the names and addresses of the owner of the vehicle, boat or animal as well as of the consignor and consignee of such goods; and where any of the consignors or consignee is a dealer registered under this Act or the Central Sales Tax Act, 1956 or relevant Act in any other State, the LXXIVof driver or any other person in-charge of the vehicle, boat or animal shall also give . 1956. the number and place of issue of the certificate of registration, if any, of such dealer.

- (3) The driver or other person in-charge of a vehicle, boat or animal carrying goods shall -
- (a) carry with him a log book, a bill of sale or delivery note and such other documents relating to the goods carried in the vehicle or boat or on the animal and containing such particulars as may be prescribed and the driver or person in charge of a transport vehicle shall, in addition, carry a goods vehicle record and a trip sheet;

- (b) produce the same when requested to do so by the office-in-charge of the check-post or barrier;
- (c) give to the officer-in-charge of the check-post or barrier a declaration relating to particulars of the goods carried in the vehicle or boat or on the animal in such form as may be prescribed and keep one copy of declaration with him.
- (4) If the officer-in-charge of the check-post or barrier is of the opinion that -
 - (i) goods under transport are not covered by goods vehicle record, trip-sheet or log book, or
 - (ii) goods under transport are not in accordance with the documents prescribed under clause (a) of sub-section (3), or
 - (iii) a declaration relating to particulars of goods as made clause (c) of sub-section (3) is false,

he may, after recording the reasons, seize such goods and vehicle and give receipt thereof to the person from whose possession or control, the goods or vehicles are seized.

- (5) (a) The officer-in-charge of the check-posts or barrier may, after giving the owner, driver or person-in-charge of goods, a reasonable opportunity of being heard and after holding such further inquiry, as he deams fit, impose on him penalty, in addition to tax payable under this Act, not exceeding one and onehalf times of the tax for possession of goods or vehicles so seized.
- (b) The officer-in-charge of the check-post or a barrier may release any of the goods, vehicle or documents so seized under sub-section (4) on payment of tax, interest and penalty or on furnishing such security in such form as may be prescribed.
- The officer-in-charge of the check post or barrier may, during inspection and verification of goods under transport including the documents and records relating thereto, direct the carrier not to part with the goods including re-transporting or re-booking until verification of goods, records and documents is done or inquiry, if any, is completed.

Explanation.— In this section,-

- (a) "goods vehicle record" means the documents required to be carried by the dealer of a transport vehicle under the Motor Vehicle Act, 1988 or the rules made 59 of 1988. thereunder:
 - (b) "log book" means a register, statement or other record containing particulars of the goods under transport;
 - (c) "trip sheet" means a sheet or other document containing particulars relating to the trip-wise use of a transport vehicle, required to be carried by the driver under the Act referred to in clause (a);

- (d) "goods under transport" means goods which have been handed over to a carrier and complete delivery thereof has not been taken from such carrier;
- (e) "carrier" means any person or agency who undertakes to carry or transport goods from one place to another.

Transit pass for transit of goods by road through the State.

- 69. (1) Where a vehicle, boat or animal carrying goods coming from any place outside the State is bound for any other place outside the State, the driver or any other person in-charge of such vehicle, boat or animal shall obtain in the prescribed manner a transit pass for such vehicle, boat or animal from the officer-in-charge of the first check-post or barrier after his entry into the State and deliver the same to the officer-in-charge of the last check-posts or barrier before his exit from the State.
- (2) If the driver or person-in-charge of such vehicle, boat or animal fails to deliver such transit pass, or goods in vehicle, boat or animal are not found in accordance with the transit pass, at the place of exit from State, it shall be presumed that goods carried thereby are sold within the State and he shall be liable to pay tax and penalty not exceeding one and one-half times the amount of tax as may be determined, after giving a reasonable opportunity of being heard, on such sale in accordance with provisions of this Act.

Furnishing of information by owners of cold storage, warehouses, godowns, etc.

- 70. (1)Notwithstanding anything to the contrary contained in any law for the time being in force every owner or lessee of a cold storage, warehouse, godown or any such place, who stores therein taxable goods for hire or reward shall maintain or cause to be maintained a correct and complete account indicating the full particulars of the person whose goods are stored in such places and the quantity, value and date of delivery of such goods.
- (2) Such accounts shall, on demand, be produced before the Commissioner or any officer authorised in this behalf who may take or cause to be taken such extracts therefrom or require such extracts to be furnished as he may consider necessary.
- (3) If any owner or lessee of a cold storage, warehouse, godown or any other such place, who stores goods for hire or reward, contravenes any of the provisions of sub-section (1) or sub-section (2) in a manner likely to lead to evasion of any tax payable under this Act, the Commissioner may, without prejudice to any other action which may be taken against such owner or lessee under any other provision of this Act direct, after giving an opportunity of being heard, that such owner or lessee shall pay by way of penalty not exceeding the amount of tax leviable on the goods in respect of which default is committed under sub-section (1) or (2).

Power to collect statistics.

- 71. (1) If the Government considers that for the purposes of better administration of this Act, it is necessary so to do, it may by notification in the *Official Gazette*, direct that statistics be collected relating to any matter dealt with, by or under this Act.
- (2) Upon such direction being made, the Commissioner may, by notice in any newspaper or in such other manner as he deems fit to bring to the notice of dealers, call upon any class of dealers to furnish such information or statements as may be stated in such notice relating to any matter in respect of which statistics are to be collected. The form in which, the persons to whom or,

the authorities to which, such information or returns should be furnished and the intervals at which such information or returns should be furnished, shall be such as may be prescribed.

- (3) Without prejudice to the generality of the provisions of this Act, the State Government may by rules provide that every registered dealer or any class of registered dealer shall furnish such statements as may be prescribed.
- dealer have been destroyed as a result of fire or any natural or other calamity or event, he may by notice in writing, require the dealer to appear before him on a date and at such place specified in the notice, or to produce before him any accounts or registers or documents or copies thereof or to furnish fresh returns under this Act or earlier law for such period, by such dates and to such authority as may be specified in the notice (being returns for a period for which the dealer has not yet been assessed), or to furnish true copies of or extracts—from any documents already submitted to the Commissioner, on or before the date specified in the notice, or to furnish any other information relating to the business of the dealer as may be specified in the notice, being information which the Commissioner considers necessary for facilitating the work of assessment or reassessment or the collection of the tax from such dealer under this Act or under earlier law.

Special powers for reconstitution of records in certain circumstances.

- (2) Without prejudice to the generality of the powers conferred by subsection (1), the Commissioner may require the dealer to produce for inspection to or furnish copies of or extracts from all or any of the following, namely:-
 - (a) application for the issue of a certificate of registration made under this Act;
 - (b) certificate of registration granted to the dealer;
 - (c) returns furnished by the dealer;
 - (d) proof of payment of tax and penalty by the dealer;
 - (e) a certified copy of the assessment order given to the dealer;
 - (f) any notice of demand served on the dealer;
 - (g) specimen signature furnished by a dealer;
 - (h) any nomination made by a dealer.
- (3) For securing compliance with any notice given under this section, the Commissioner shall have all the powers specified in section 67.
- (4) Where any person is prosecuted for failure to comply with any requirement made of him under this section, the burden of proving that he had reasonable excuse for such failure shall be on him.

CHAPTER IX

APPEAL, REVISION, REFERENCE AND RECTIFICATION.

Appeal.

- 73. (1) An appeal from every original order, not being an order mentioned in section 74, passed under this Act or the rules, shall lie,-
- (a) if the order is made by a an Assistant Commissioner or Commercial Tax Officer, or any other officer sub-ordinate thereto, to the Deputy Commissioner;
- (b) if the order is made by a Deputy Commissioner, to the Joint Commissioner;
- (c) if the order is made by a Joint Commissioner, Additional Commissioner, or Commissioner, to the Tribunal.
- (2) In the case of an order passed in appeal by a Deputy Commissioner or, as the case may be, by a Joint Commissioner, a second appeal shall lie to the Tribunal.
- (3) Subject to the provisions of section 84, no appeal shall be entertained unless it is filed within sixty days from the date of communication of the order appealed against.
- (4) No appeal against an order of assessment shall ordinarily be entertained by an appeal at authority, unless such appeal is accompanied by satisfactory proof of payment of the tax in respect of which an appeal has been preferred:

Provided that an appellate authority may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order on production of proof of payment of twenty per cent of the amount of tax payable under such order.

- (5) The Commissioner, on receipt of notice that an appeal against the order passed in appeal by the Deputy Commissioner or, as the case may be, by the Joint Commissioner has been preferred by the other party to the Tribunal may, within thirty days of receipt of the notice, file a memorandum of cross objection against any part of the order passed in appeal by the Deputy Commissioner or, as the case may be, by the Joint Commissioner and such memorandum shall be disposed of by the Tribunal as if it were an appeal.
- (6) Subject to such rules of procedure as may be prescribed, an appellate authority may pass such order on appeal as it deems just and proper.
- (7) Every order passed in appeal under this section shall, subject to the provisions of sections 75, 78 and 79, be final.

Nonappealable orders.

- 74. No appeal or no application for revision shall lie against,—
 - (a) a notice issued under this Act calling upon a dealer for assessment or asking a dealer to show cause as to why he should not be prosecuted for an offence under this Act; or
 - (b) an order of the Commissioner under sub-section (1) of section 17;

- (c) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (d) an order sanctioning prosecution under this Act; or
- (e) an interim order in the course of any proceedings under this Act.
- 75. (1) Subject to the provisions, of section 74 and to any rules made there Revision under.
 - (a) the Commissioner of his own motion within three years or on an application made to him within one year from the date of any order passed by any officer appointed under section 16 to assist him, may call for and examine the record of any such order and pass such order thereon as he thinks just and proper within two years from the date of service of notice for revision;
 - (b) the Tribunal, on application made to it against an order of the Commissioner (not being an order passed under sub-section (2) of section 73 in second appeal or under clause (a) in revision on an application) within four months from the date of the communication of the order may call for and examine the record of any such order, and pass such order thereon as it thinks just and proper.
- (2) Where an appeal lies under section 73 and no appeal has been filed, no proceedings in revision under this section shall be entertained upon application:

Provided that the proceedings in revision may be entertained up an application where the applicant satisfies the Commissioner that he had sufficient cause for not preferring an appeal against the order in respect of which an application for revision is made.

- (3) No order shall be passed under this section which adversely affects any person, unless such person has been given reasonable opportunity of being heard.
- (4) Where the Commissioner or the Tribunal rejects any application for revision under this section, the Commissioner or, as the case may be, the Tribunal shall record the reasons for such rejection.

Bom. XXXVI of 1959.

76. Notwithstanding anything contained in the Bombay Court-fees Act, 1959, an appeal preferred under section 73 and an application for revision made under section 74 shall bear a court-fee stamp of such value as may be prescribed.

Court-fee on appeal and application for revision.

63 of 1963.

77. In computing the period laid down under sections 73, 75 and 78, the provisions of sections 4 and 12 of Limitation Act, 1963 shall, so far as may be, apply.

Applications of sections 4 and 12 of Limitation Act, 1963.

78. Any person or the Commissioner, within ninety days from the date of the communication of the order of the Tribunal, passed in appeal or revision, being an order which affects the liability of any person to pay tax, interest or penalty,

Statement of case to the High Court.

or which affects the recovery from such person of any amount under section 44, may, by application in writing (accompanied, where the application is made by that person, by a fee of one hundred rupees) require the Tribunal to refer to the High Court any question of law arising out of such order; and where the Tribunal agrees, the Tribunal shall, as soon as may be, after the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that if in the exercise of its power under this sub-section, the Tribunal refuses to state the case which has been required to do on the ground that no question of law arises, that person, or as the case may be, the Commissioner may, within thirty days of such refusal either withdraw his application or apply to the High Court against such refusal.

- (1) If the High Court, upon receipt of an application under sub section (1), is not satisfied as to the correctness of the decision of the Tribunal, it may require the Tribunal to state the case and refer to it; and accordingly, on receipt of any such requisition, the Tribunal shall state the case and refer it to the High Court.
- (2) If The High Court is not satisfied that the statements in the case referred under this section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Tribunal to make such addition thereto or alterations therein, as the High Court may direct in that behalf.
- (3) The High Court upon the hearing of any such case, shall decide the question of law raised thereby, and shall deliver its judgement thereon containing the grounds on which such decision is founded, and shall send to the Tribunal a copy of such judgement under the seal of the court and the signature of the Registrar, and the Tribunal shall dispose of the case accordingly.
- (4) Where a reference is made to the High Court under this section, the costs including the disposal of the fee referred to in sub-section (1), shall be in the discretion of the Court.
- (5) The payment of the amount of the tax, if any, due in accordance with the order of the Tribunal in respect of which an application has been made under sub-section (1) shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as a result of such reference, the excess tax paid shall be refunded in accordance with the provisions of section 36.

Rectification of mistakes.

79. (1) The Commissioner may at any time within two years from the date of the communication of the order passed by him, to the person affected by such order, on his own motion, rectify any mistake of fact apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such order:

Provided that, no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of refund or tax credit, unless the Commissioner has given notice in writing to such person of his intention to do so and has allowed such person a reasonable opportunity of being heard.

(2) The provisions of sub-section (1) shall apply to the rectification of a mistake by the Tribunal or an appellate authority under section 73 as they apply to the rectification of a mistake by the Commissioner.

- (3) Where any such rectification has the effect of reducing the amount of the tax, interest or penalty, the Commissioner shall, in the prescribed manner, refund any amount due to such person.
- (4) Where any such rectification has the effect of enhancing the amount of the tax or penalty or reducing the amount of refund, the Commissioner shall recover the amount due from such person in accordance with the provisions of the Act.
- If any question arises, otherwise than in proceedings before a court, or proceedings under section 33, 34 or 35, whether for the purposes of this Act-

Determination of disputed questions.

- (a) any person, society, club or association or any firm or any branch or department of any firm is a dealer, or
- (b) any particular thing done to any goods amounts to or results in the manufacture of goods within the meaning of that term, or
- (c) any transaction is a sale or purchase, or
- (d) any particular dealer is required to be registered, or
- (e) any tax is payable in respect of any particular sale or purchase or if tax is payable the rate thereof, or
- (f) any tax credit is admissible under section 11 or section 12, the Commissioner shall make an order determining such question.
- The Commissioner may direct that the determination shall not affect the liability of any person under this Act, with respect to any sale or purchase effected prior to the determination.
- If any such question arises from any order already passed under this Act or under the earlier law, no such question shall be entertained for determination under this section; but such question may be raised in appeal against, or by way of revision of such order.

CHAPTER X

PROCEEDINGS

81. (1) Any person, who is entitled or required to attend before any authority in connection with any proceedings under this Act, may attend,-

Appearance before any authority in proceedings.

- (a) by a person authorised by him in writing in this behalf, being a relative or a person regularly employed by him; or
- (b) by a legal practitioner or Chartered Accountant or Cost Accountant who is not disqualified by or under sub-section (2); or
- (c) by a sales tax practitioner who possesses the prescribed qualifications and is entered in the list, which the Commissioner shall maintain in that behalf, and who is not disqualified by or under sub-section (2).

- (2) The Commissioner may, by order in writing and for reasons to be recorded therein, disqualify for such period as is stated in the order from attending before any such authority, any legal practitioner, Chartered Accountant, Cost Accountant or sales tax practitioner-
 - (a) who has been removed or dismissed from Government service; or
 - (b) who being a legal practitioner or Chartered Accountant or Cost Accountant is found guilty of misconduct in connection with any proceedings under this Act by an authority empowered to take disciplinary action against the members of the profession to which he belongs; or
 - (c) who being a sales tax practitioner is found guilty of such misconduct by the Commissioner.
- (3) No order of disqualification shall be made in respect of any particular person unless he has been given a reasonable opportunity of being heard.
- (4) Any person against whom an order of disqualification is made under this section may, within one month of the date of communication of such order, appeal to the State Government and the State Government may pass such order in appeal as it may think fit.
- (5) The order of the Commissioner shall not take effect until one month of the making thereof or when an appeal is preferred, until the appeal is decided.
- (6) The Commissioner may at any time *suo-motu* or on an application made to him in this behalf, revoke any order made against any person under subsection (2) and thereupon such person shall cease to be disqualified.

Power of Commissioner and other authorities to take evidence on oath, etc. 82. (1) The Commissioner or any person appointed under sub-section (2) of section 16 to assist him shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure. 1908, when trying a suit, in respect of the following matters, namely, -

5 of 1908.

- (a) enforcing the attendance of any person and examining him on oath or affirmation; and
- (b) compelling the production of accounts and documents; and
- (c) issuing commissions for the examination of witnesses.
- (2) Any proceeding under this Act before the Commissioner or any person appointed under subsection (2) of section 16 to assist him shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code, 1860.

XLV of 1908.

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its custody for such period as it thinks fit, any books of account or other documents produced before it in any proceedings under this Act:

Provided that a person appointed under sub-section (2) of section 16 to assist the Commissioner shall not impound any books of account or other

PART VI

documents will out recording his reasons for doing so and retain in his custody any such books or documents for a period exceeding thirty days without obtaining the approval of the Commissioner therefor.

Whenever in respect of any proceeding under this Act, the Commis-83. sioner or any person appointed under sub-section (2) of section 16 to assist him, ceases to exercise jurisdiction and is succeeded by another person who has and exercises jurisdiction, the person so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Change of an incumbent of an office.

Provided that the dealer concerned may demand that before the proceeding is so continued, the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he shall be reheard.

An appellate authority may admit any appeal or permit the filling of a 84. memorandum of cross objections under section 73 and the Tribunal may admit an application under section 75 or under section 78 after the period of limitation laid down in the said sections, if the appellant or the applicant satisfies the appellate authority or the Tribunal, as the case may be, that he had sufficient cause for not preferring the appeal or filing a memorandum of cross objections or making the application, within such period.

Extension of period of limitation in certain cases.

CHAPTER XI

OFFENCES AND PENALTIES.

85. (1) Whoever,-

Offences and penalties.

- (a) not being a registered dealer, falsely represents that he is or was a registered dealer at the time when he sells or purchases goods;
- (b) knowingly furnishes a false return where the amount of tax, which could have been evaded if the false return had been accepted as true, exceeds Rs. 1000:
- (c) knowingly produces before the Commissioner, false tax invoice, bill, voucher, cash-memorandum, declaration, certificate or other document for claiming deduction or tax credit, the value of which exceeds Rs. 1000
- (d) fails to pay tax as per the returns filed by him;
- (d) knowingly keeps or produces false account;
- (f) issues to any person certificate or declaration under this Act, or a invoice, bill, cash-memorandum, voucher or other document which he knows or has reason to believe to be false;
- (g) willfully attempts, in any manner whatsoever, to evade tax leviable under this Act;

shall on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine of rupees twenty thousand.

(2) Whoever-

- (a) carries on business as a dealer without being registered in contravention of section 21; or
- (b) fails without sufficient cause to furnish any information required by section 26; or
- (c) fails to surrender his certificate of registration as provided in subsection (9) of section 27; or
- (d) fails without sufficient cause to furnish any returns as required by section 29 by the date and in the manner prescribed; or
- (e) without reasonable cause, contravenes any of the provisions of section 31; or.
- (f) fails without sufficient cause, when directed so to do under section 62 to keep any accounts or record, in accordance with the directions; or
- (g) fails without sufficient cause, to comply with any requirements made of him under section 67, or obstructs any officer making inspection or search or seizure under that section; or
- (h) obstructs or prevents any officer performing any function under this Act; or
- (i) being owner or in-charge of a goods vehicle fails, neglects or refuses to comply with any of the requirements contained in section 67 or 68,
- (j) issues to another registered dealer tax invoice, retail invoice, bill or cash memorandum with the intention to defraud the Government revenue or with the intention that the Government may be defrauded of its revenue,

shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine of rupees twenty thousand.

- (3) Subject to the provision of section 97, if any Government servant discloses any particulars referred to in sub-section (1) of section 92, he shall, on conviction, be punished with imprisonment for a term which may extend to six months and with fine.
- (4) Whoever aids or abets any person in commission of any act specified in sub-sections (1) or (2) shall on conviction, be punished with rigorous imprisonment which shall not be less than three months but which may extend to one year and with fine of rupees twenty thousand.
- (5) Whoever commits any of the acts specified in sub-sections (1) to (3) and the offence is a continuing one under any of the provisions of these sub-sections, shall, on conviction, be punished with daily fine which shall not be less than rupees five hundred during the period of the continuance of the offence, in addition to the punishments provided under this section.

- (6) Where a dealer is guilty of an offence specified in sub-sections (1) and (2), the person to be the manager of the business of such dealer under section 65 shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.
- 86. (1) Where an offence under this Act or the rules there under has been committed by a company, every person who at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies, etc.

Provided that, nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

- (a) "company" means a body corporate, and includes a firm or other association of persons; and
- (b) "director" in relation to a firm means a partner in the firm.
- (3) Where an offence under this Act has been committed by a Hindu Undivided Family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the *karta* liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that, where an offence under this Act has been committed by a Hindu Undivided Family and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any adult member of the Hindu Undivided Family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

87. (1) No court shall take cognizance of any offence under this Act or the rules except with the previous sanction of the Commissioner, and no court inferior to that of a Metropolitan Magistrate shall try any such offence.

Cognizance of offences.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences punishable under this Act or the rules shall be cognizable and bailable.

Investigation of offences.

- **88.** (1) Subject to such conditions as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.
- (2) Every officer or person so authorized shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1973 upon an officer in-charge of a police station for the investigation of a cognizable offence.

2 of 1974.

Compounding of offences.

- 89. (1) The Commissioner may, either before or after the institution of proceedings for any offence punishable under section 85 or under any rules accept from any person charged with such offence, by way of composition of offence a sum of rupees five thousand or where the offence charged is under section 85 not exceeding double the amount of tax, but not less than the amount of tax, which would have been payable on the turnover of sale or purchase to which the said offence relates, whichever is greater.
- (2) On payment of such sum as may be determined by the Commissioner under sub-section (1), no further proceedings shall be taken against the accused person in respect of the same offence and any proceedings, if already taken, shall stand abated.

CHAPTER XII

MISCELLANEOUS

Indemnity.

- 90. (1) No suit, prosecution or other legal proceedings shall lie against the Commissioner or any officer of the Government for anything which is in good faith done or intended to be done under this Act or the rules.
- (2) No action shall lie for damages or for any other claim by any person against the Commissioner or any officer of the Government for anything done in good faith in discharge of their duties under this Act.

Public servants.

91. The Commissioner and all officers and persons appointed under section 16 and all members of Tribunal appointed under section 19 shall be deemed to be public servants within the meaning of section 21 of Indian Penal Code, 1860.

XLV of 1860.

Disclosure of information by a public servant.

92. (1) All particulars contained in any statement made or return furnished or accounts or documents produced in accordance with the provisions of this Act, or any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal court), shall, save as provided in subsection (3) be treated as confidential and no court shall save as afore aid, be entitled to require any servant of the Government to produce before it any statement, declaration, return, accounts, document or record or any part thereof, or to give evidence before it in respect thereof.

(2) Nothing contained in this section shall apply to the disclosure,—

XLV of 1860. 49 of 1988.

- (a) of any such particulars in respect of any such statement, return, account, document evidence, affidavit or deposition for the purpose of any prosecution under the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988, or this Act, or
- (b) of any such particulars to the State Government or to any person acting in the execution of this Act, for the purpose of carrying out the object of this Act, or
- (c) of any such particulars when such disclosure is occasioned by the lawful employment under this Act, of any process for the service of any notice or the recovery of any demand. or
- (d) of any such particulars to a civil court in any suit, to which the Government is a party, which relates to any matter arising out of any proceedings under this Act, or
- (e) of any such particulars to any officer appointed to audit, receipt or refund of the tax imposed by this Act, or
- (f) of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Sales Tax Department to any person or persons appointed to hold such inquiry, or
- (g) of such facts to an officer of the Central Government or a State Government as may be necessary for the purpose of enabling the Government to levy or realise any tax or duty imposed by it, or

Bom. XL of 1958. II of 1989.

- (h) of any such particulars, when such disclosure is occasioned by the lawful exercise by a public servant of his powers under the Bombay Stamps Act, 1958 or the Indian Stamp Act, 1989 to impound an insufficient stamped document, or
- (i) of any such particulars where such particulars are relevant to any inquiry into a charge of misconduct in connection with sales tax proceedings against a legal practitioner, sales tax practitioner, Chartered Accountant or Cost Accountant to the authority empowered to take disciplinary action against members practising the profession of a legal practitioner, sales tax practitioner, Chartered Accountant or Cost Accountant, as the case may be, or
- (j) of any such particulars to the Director, Bureau of Economic and Statistics or to any person or persons authorized under sub-section (2) of section 71 as may be necessary to enable the Director or such person or persons to work out the incidence of tax on any commodity, or
- (k) of any such particulars to an officer of the Central Government for the purpose of investigation or prosecution under any law for the time being in force, as the State Government may direct in any specific case.
- 93. (1) No assessment (including re-assessment, revision or rectification), notice, summons or other proceedings made or issued or taken or purported to have been made or issued or taken in pursuance of any of the provisions of this Actor under the earlier law shall be invalid or shall be deemed to be invalid merely

Assessment proceedings etc. not to be invalid on certain grounds.

by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings, if such assessment, notice, summons or other proceedings are in substance and effect in conformity with or according to the intent and purposes of this Act or any earlier law.

- (2) The service of any notice, order or communication shall not be called in question if the said notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or which service has not been called in question at or in the earliest proceedings commenced, continued or finalized pursuant to such notice, order or communication.
- (3) No order of assessment, re-assessment, revision or rectification passed under the provisions of this Act shall be invalid merely on the ground that the action could also have been taken by any other authority under any other provision of this Act.

Bar of jurisdiction of civil courts.

- 94. Save as provided by section 78,-
- (i) no civil court shall have jurisdiction to deal with or decide any question which the Tribunal, the Commissioner or any officer appointed to assist him is empowered to deal with or decide by or under this Act and no injunction shall be granted by any civil court in respect of any action taken or to be taken in pursuance of any power by or under this Act;
- (ii) no assessment made and no order passed under this Act or the rules made thereunder by the Tribunal, the Commissioner or any officer appointed to assist him shall be called in question in any civil court.

Disclosure of information required under section 71.

- 95. (1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 71 shall without the previous consent in writing of the owner for the time being or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular dealer and no such information shall be used for the purpose of any proceedings under the provisions of this Act.
- (2) Except for the purpose of prosecution under this Act, or under the Indian Penal Code, 1860 no person who is not engaged in the collection of statistics under Section 71 or in the administration of this Act shall be permitted to see or have access to any information or any individual return referred to in that section.

XLV of 1860.

(3) If any person required to furnish any information or return under section 71,—

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- (a) without reasonable cause fails to furnish such information or return as may by that section be required, or
 - (b) willfully furnishes or causes to furnish any information or return which he knows to be false,

he shall, on conviction, be punished with fine which may extend to one hundred rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues.

PART VI

If any person engaged in connection with the collection of statistics under section 71 willfully discloses any information or the contents of any return given or, made under that section, otherwise than in execution of his duties under that section or for the purposes of the prosecution of any offence under this section or for the purposes of the prosecution of an offence under this Act or under the Indian Penal Code, 1860 he shall on conviction be punished with imprisonment for a term which may extend to six months or with fine which may be extend to one thousand rupees or with both.

XLV of 1860.

96. On every application,-

Levy of fees.

- (a) for a certified or duplicate copy of a certificate of Registration or
- (b) for a certified copy of an order of assessment or any order passed or any document produced or filed in any proceeding under this Act, or ...
- (c) for the determination of any question under section 80, or
- (d) for a copy of order or document under this Act

there shall be paid such fee in court fee stamps as may be prescribed.

97. (1) Notwithstanding anything contained in section 92, if the Commissioner is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealers or other persons and any other particulars relating to any proceedings under this Act in respect of such dealers and persons, he may publish or disclose or cause to be published or disclosed such names and particulars in such manner as he thinks fit.

Publication of information regarding dealers and other persons in public interest.

(2) No publication or disclosure under this section shall be made in relation to any tax levied or penalty imposed or interest levied or any conviction for any offence connected with any proceeding under this Act, until the time for presenting an appeal to the appropriate appellate authority has expired without an appeal having been presented or the appeal, if presented has been disposed of.

Explanation. — In the case of a firm, company or other association of persons, the names of the partners of the firm, the directors, secretaries, treasurers or managers of the company or the members of the association, as the case may be. may also be published or disclosed, if, in the opinion of the State Government, the circumstances of the case justify it.

98. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters expressly required or allowed by this Act to be prescribed by rules.
- (3) In making any rules under this section the State Government may direct that a breach thereof shall be punishable with fine not exceeding two thousand rupees, and when the offence is continuing one, with a daily fine not exceeding one hundred rupees during the continuance of the offence.

(4) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication:

Provided that if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any rule to be made under this section.

(5) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or session immediately following. Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

Power to remove difficulties.

99. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by general or special order published in the *Official Gazette*, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such order shall be made after the expiration of two years from the commencement of this Act.

Repeal and savings.

100. (1) The Gujarat Sales Tax Act, 1969 and the Gujarat Purchase Tax on Sugarcane Act, 1989 are hereby repealed:

Guj. 1 of 1970. Guj. 11 of 1989.

Provided that such repeal shall not affect the previous operation of the said Acts or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject thereto, anything done or any action taken including any appointment, notification, notice, order, rule, form or certificate in exercise of any powers conferred by or under the said Act shall be deemed to have been done or taken in exercise of the powers, conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amount due at the commencement, of this Act may be recovered as if they had accrued under this Act.

(2) Notwithstanding the repeal of the Gujarat Sales Tax Act, 1969, or as the case may be, the Gujarat Purchase Tax on Sugarcane Act, 1989, (hereinafter in this section referred to as the "said Act") —

Guj. 1 of 1970. Guj. 11 of 1989.

(a) all rules, regulations, orders, notifications, forms and notices issued under the said Act and in force immediately before the appointed day shall continue to have effect for the purposes of the levy, assessment, reassessment, collection, refund or set-off of any tax, or the granting of a drawback in respect thereof or the imposition of any penalty, which levy, assessment, reassessment, collection, refund, set-off, drawback or penalty relates to any period before the appointed day or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid.

- (b) any registration certificate issued under the said Act and in force immediately before the appointed day shall be deemed to be the registration certificate issued under this Act, and accordingly such registration certificate shall be valid and effectual as a registration certificate under this Act until such certificate is issued, substituted, suspended or cancelled under the provisions of this Act.
- (c) any appointment, notification, order, rule, regulation, form or notice made or issued under the said Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force, and be deemed to have been made or issued under the provisions of this Act, unless and until it is superseded by any appointment, notification, order, rule, regulation, form or notice made or issued under the provisions of this Act:
- (d) any person entitled to appear before any authority under the said Act shall be deemed to be entitled to appear before any authority under this Act, and accordingly if such person be a sales tax practitioner he shall be entitled to have his name entered in the list maintained under section 81.

Bom. 1 of 1904.

(3) Without prejudice to the provisions contained in subsection (2) and subject thereto, section 7 of the Bombay General Clauses Act, 1904 shall apply in relation to the repeal of said Act as if the said Act had been enacted within the meaning of the said section 7.

SCHEDULE I

[See sub-section (1) of section 5 1]

GOODS, THE SALES OR PURCHASE OF WHICH ARE EXEMPT FROM TAX

Sr. no.	Description of goods.	Conditions and exceptions subject to which exemption is granted.
_ 1	2	3
1	Agate (Akik) Stones and articles made therefrom	
2	(i)Agricultural implements operated exclusively by human or	-
• u.	animal agency for exclusive use in agricultural operations and the parts thereof, which are ordinarily not also used otherwise than as such parts. (ii) Opener (Huller) and thrasher for agriculture use.	
3	Aids and implements used by handicapped persons. (1) Braille educational equipment, Braille typewriters, Braille writing slates and Braille watch. (2) Group hearing aids and Hearing aids. (3) induction group aids. (4) Speech trainer. (5) Language master (6) Audiometer.	•

(7) Voice chord. (8) Walkers. (9) Wheel chair. (10) Calipers of all types. (11) Artificial limbs. (12) Crutches. (13) Orthopaedic footwear and Orthopaedic implants. (14) Tricycles and auto-tricycles for handicapped persons (15) All types of splints. (16) Heart valves. (17) Prosthetic aids for leprosy affected people. (18) Intra-ocular lens used for cataract operation.	
 (9) Wheel chair. (10) Calipers of all types. (11) Artificial limbs. (12) Crutches. (13) Orthopaedic footwear and Orthopaedic implants. (14) Tricycles and auto-tricycles for handicapped persons (15) All types of splints. (16) Heart valves. (17) Prosthetic aids for leprosy affected people. (18) Intra-ocular lens used for cataract operation. 	
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(16) Heart valves. (17) Prosthetic aids for leprosy affected people. (18) Intra-ocular lens used for cataract operation.	
(17) Prosthetic aids for leprosy affected people. (18) Intra-ocular lens used for cataract operation.	
(18) Intra-ocular lens used for cataract operation.	
5 Bangles made of glass or plastic bangles.	
6 Betel leaves and pan, tambul, vida, or patti prepared from	•
betel leaves.	
7 Bindi, Kumkum or sindur.	5 .
	which are
	ed in entry
56 in S	Schedule II
9 (1) Bread.	**
(2) Khakhra, papad, papad pipes	***
(3) Sev made out of wheat flour or maida	
(4) Unfried potato katri	
10 Cattle, sheep and goats.	<u> - 1</u> 2
11 Cattle feed including fodder, grass, hay and straw and	-
concentrates. (excluding cottonseeds, oilcakes and	
de-oiled cakes.)	
12 (i) Cereals and pulses; Except	when sold
(ii) Flour of cereals and pulses except Maize flour; in seale	d
(iii) Wheat flour, Rava, Suzi or maida made from wheat. package	e under a
brand.	
13 Charkha and other implements and spare parts thereof	-
meant for use in the production of handspun yarn, as may	
be specified by the State Government by notification in the	
Official Gazette.	
14 Chikki and revdi.	9
15 Chillies, tamarind and turmeric whole or in powder form. Except v	when sold
in seale	
	e under a
brand.	
16 Coconut in shell (other than kopra).	_
17 Condoms, loops and contraceptive devices.	
18 Deshi Nalia	
19 Drip irrigation equipment	
20 Eggs	
21 Electrical energy	
	when sold
Government may by notification in the Official Gazette, in sealed	
	ers under
The first of the feet for a state of the feet for the fee	
a brand.	· _ v
23 (i) Firewood and Charcoal.	•
23 (i) Firewood and Charcoal. (ii) Wood of <i>Limda, Pipla, Baval</i> and <i>Vadla</i> sold in form	№ [¥]
23 (i) Firewood and Charcoal.	•

4 F	ish, Sea food, and other aquatic products	Except when sold
l		in sealed
		containers under
•		a brand.
5 F	ishing nets	, =
6 /	NEresh flowers (excluding artificial flowers).	*
17	ii) Veni, gaira, garlands and such other articles prepared	* n.
_ [rom fresh flowers (excluding those of artificial flowers).	
7	lower, fruit and vegetable seed, seeds of lucerne grass	· -
	Rajka) and of sann hemp, bulbs, tubers and plants other) — — — — — — — — — — — — — — — — — — —
- 11	han orchids.	
28	Fresh fruits, fresh vegetables, edible tubers and garlic.	
29	Gur but not including Kakavi or Kakab or molasses	-
30	Haar, Pavitra, Kalagi, Mugat, Modh. etc. made from artificial	-
ין טכ	silk yarn and artificial silk yarn waste.	
31	Hand Carts or animal driven carts.	-
21	HOLD CARD OF WHITE MITTERS CO.	
32	Handlooms and parts thereof	-
26	HOHOLOUNG WISE POST AND	
33	(i) Handloom fabrics,	-
53	(ii) Patola sarees or other articles woven on handlooms.	
	(iii) Silk Kinkhab fabrics, that is to say handloom cloth	
	interwoven with silk yarn and jari thread.	_
	Heena Powder (Mahendi)	• •
34	Heena Powder (Manerica)	-
35	Human blood and human blood plasma.	-
36	Hurricane and hurricane lamps of all kinds and spare parts	
	and accessories thereof.	-
37	Khakhra pan	-
38	Kites (Patang)	-
39	Manure, that is to say Organic manure (excluding chemical	
	fertilizers, oil cakes or de-oil cakes)	Except when sold
40	Meat	in sealed
		containers.
	Lal as postourized milk (except	
	(i) Milk - whole or separated, or pasteurized milk (except	·
41		
41	milk powder)	
	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka	
41	milk powder) (ii) Butter milk, Curd, <i>Lass</i> i, and <i>Chakka</i> Motor Spirit as defined in the Bombay Sales of Motor Spirit	
	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Tayation Act, 1958 (Bom.LXVI of 1958).	
	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic	
42	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds.	
42	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala	
42 43	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala Pawrah and pick-axe	
42	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala	
42 43 44 45	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala Pawrah and pick-axe Plantain leaves Poultry	
42 43 44 45 46 47	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala Pawrah and pick-axe Plantain leaves Poultry	
42 43 44 45 46 47 48	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala Pawrah and pick-axe Plantain leaves Poultry Poultry feed	
42 43 44 45 46 47 48 49	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala Pawrah and pick-axe Plantain leaves Poultry Poultry feed Rakhadi	
42 43 44 45 46 47 48 49 50	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala Pawrah and pick-axe Plantain leaves Poultry Poultry feed Rakhadi Salt (i) Stamp papers sold by Government Treasuries or vendors	
42 43 44 45 46 47 48 49	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala Pawrah and pick-axe Plantain leaves Poultry Poultry feed Rakhadi Salt (i) Stamp papers sold by Government Treasuries or vendors	
42 43 44 45 46 47 48 49 50	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala Pawrah and pick-axe Plantain leaves Poultry Poultry feed Rakhadi Salt (i) Stamp papers sold by Government Treasuries or vendors (ii) Postal items like envelope, post card etc. sold by	
42 43 44 45 46 47 48 49 50	milk powder) (ii) Butter milk, Curd, Lassi, and Chakka Motor Spirit as defined in the Bombay Sales of Motor Spirit Taxation Act, 1958 (Bom.LXVI of 1958). Musical instruments (handmade and other than electronic musical instruments) and Harmonium reeds. Padia and patrala Pawrah and pick-axe Plantain leaves Poultry Poultry feed Rakhadi Salt (i) Stamp papers sold by Government Treasuries or vendors	

53	Water (other than aerated, mineral, purified water, medicinal, ionic, distilled, battery, de-mineralized water and water sold in sealed container).	
54	 (i) Wooden brushes meant for house-hold purposes; (ii) Articles made from wood, that is to say <i>Dhoka</i>, Welan, Bajoth, Patla-Patli and Cradles. (iii) Wooden frames of Drum, <i>Dholak</i>, Tabla, Konga or bonga. 	

SCHEDULE II

[See section 7 and section 9]

GOODS, THE SALES OR PURCHASE OF WHICH IS SUBJECT TO TAX AND THE RATE OF TAX

Sr.	DESCRIPTION OF GOODS.	Data of town
no.	DESCRIPTION OF GOODS.	Rate of tax
1	2	3
7	Agricultural implements to which entry 1 in schedule I does not apply	Four paise in
	and agricultural machinery.	the rupee
2	Bamboo, whether whole or split and articles made of Bamboo.	Four palse in
'		the rupee
3	Bearings of all types, including ball-bearing, roller bearings, taper	Four paise in
	pearing and niddle roller bearings and spare parts and components	the rupee
	thereof.	uno rapoe
4	Beltings	Four paise in
		the rupes
5	Betel nut and Arecanut powder	Four paise in
		the rupee
6	Bicycles, tricycles, cycle rickshaws, pedal rickshaws, and	Four paise in
-,	cycles combination and & accessories and parts thereof	the rupee
7	Bolts and nuts	Four paise in
8		the rupee
0	Bone meal	Four paise in
9	Brass parts	the rupee
٦	Lorass parts	Four paise in
10	(i) Bricks of all kinds including the set but to	the rupee
. 10	(i) Bricks of all kinds including fly ash bricks, refractory bricks. (ii) Roofing tiles known as <i>Manglori Nalia</i> .	Four paise in
11	Buckets drume trunks Chamela and Tages to 0	the rupee
' '	Buckets, drums, trunks, Ghamela and Tagara made of GP sheets or CR Sheets.	Four paise in
12	Bulk drugs	the rupee
	/ / / / / / / / / / / / / / / / / / /	Four paise in
13	(i) Bullion and specie, gold, silver, and other precious metals.	the rupee
	(ii) Articles or jewellery made of gold or silver or both or of other	One paise in
	precious metals (studded or not studded with precious stones or	the rupee
	pearls whether real, artificial or cultured)	
	(iii) Precious stones, semi-precious stones and pearls of all types	
14	Candle made of wax	Four paise in
		the rupee
		(MPCC

<u> </u>	and the second s	t de la compaña de la comp
15	The state of the s	Four paise
	Government under clause (5) of section 2.	the rupee
	(ii) Plant and machinery.	
16	Castings or Cast Iron casting.	Four paise in
		the rupee
17	Caustic soda and silicate of soda	
	Substitution of South	Four paise in
18	Chemicals.	the rupee
10	Onemicals.	Four paise in
40		the rupee
19	Chemical fertilizers of all types.	Four paise in
		the rupee
20	(i) Coal including coke in all its forms but excluding charcoal	Four paise in
1	(ii) Fly ash of coal	the rupee
	(iii) Coal gas	Tario ropos
21	Coir and coir products excluding coir mattresses	Four poice in
7	The state of the s	Four paise in
22	Coffee beans and seeds, cocoa pods, green tea leaf and	the rupee
	Chicago tubore or chicago recets what are subject as a su	Four paise in
23	Chicory tubers or chicory roots whether cut or dried or processed.	the rupee
23	Communications equipment such as, Private Branch Exchange	Four paise in
	(P.B.X) and Electronic Private Automatic Branch Exchange	the rupee
	(E.P.A.B.X) etc.	
24	(i) Cotton, that is to say, all kinds of cotton (indigenous or imported), in	Four paise in
]	its unmanufactured state, whether ginned or unginned, baled, pressed	the rupee
	or otherwise.	
	(ii) Cotton waste	
25	Country liquors that is all liquors other than foreign liquors	Sixty paise in
	manufacture in India and foreign liquors that is potable foreign liquors	* '
	brought into or manufactured in India including spirit, wines and	the rupee
	fermented liquors	
26	Crucibles	
20	Ordobles	Four paise in
07	Country of About the second of	the rupee
27	Crude oil, that is to say, crude petroleum oil and crude oils obtained	Four paise in
	from bituminous materials such as the shale, calcareous rock sand,	the rupee
	whatever their composition whether obtained from normal or	
	condensation oil deposits or by the destructive distillation of	
•	bituminous minerals and whether or not subjected to all or any of the	Í
	following processes, -	,
	(i) Decantation,	
	(ii) de-salting	
J	(iii) dehydration,	
	(iv) stabilisation in order to normalise the vapour pressure	
	(v) elimination of very light fraction with a view to returning	
		. \
	them to the oil deposits in order to improve the drainage and	
	maintain the pressure	. 1
.*	(vi) the addition of only those hydrocarbons previously	
	recovered by physical methods during the course of the above	
	mentioned processes	
*	(vii) any other minor process (including addition of purpoint	
	depressants or flow improvers) which does not change the	
,	essential character of the substance.	
28	Drilling vine of all 1	
.0	Drilling rigs of all types and spare parts and accessories thereof.	Four paise in
		the rupee

29	Dyes	Four paise in the rupee
30	(i) Edible oils, (ii) Washed cotton seed oils	Four paise in the rupee
1,75	(iii) Vegetable non-essential oils, (iv) Hydrogenated vegetable oils including vanaspati	
31	Electrodes	Four paise in the rupee
32	Fabrics of all types which are not liable to Additional Excise Duty	Four paise in the rupee
33	Herb, bark, dry plant, dry root, commonly known as jadi booti.	Four paise in the rupee
34	Hides and skins whether in row or dressed state	Four paise in the rupee
35	Hose pipes.	Four paise in the rupee
36	Hosiery goods.	Four paise in the rupee
37	Husk including groundnut husk.	Four paise in the rupee
38	Ice	Four paise in the rupee
39	Imitation jewellry	Four paise in the rupee
40	Incense sticks commonly known as, agarbatti, Padi, Dhoop or dhupbatti and Loban	Four palse in the rupee
41	Incorporeal goods or intangible goods, that is to say, copyright, patent, Trade marks, Brand name, Import Licence	Four paise in the rupee
42	Industrial cables (High voltage cables, XLPE Cables, jelly filled cables, optical fibers cables and speciality communication cables).	Four paise in the rupee

43	Iron and steel, that is to say -	Four paise in
	(i)pig iron and cast iron including ingot, moulds, bottom plates, iron	the rupee
	scrap, cast iron scrap, runner scrap	
	(ii)Steel semis (ingots, slabs, blooms and billets of all qualities, shapes	real of
,	and sizes)	
	(iii) Skelp bars, tin bars, sheet bars, hoe bars and sleeper bars,	
[(iv)Steel bars (rounds, rods, squares, flats octagons and hexagons,	
	plan and ribbed or twisted, in coil form as well as straight lengths)	
	(v)Steel structurals, (angles, joints, channels, tees, sheet pilting	
	sections Z sections or any other rolled sections.	
	(vi)Sheets, hoops, strips, and skelp, both black and galvanised, hot	
· .	and cold rolled, plain or corrugated in all qualities in straight lengths	
	and in coil form as rolled and in rivetted conditions	
	(vii)Plates both plain and chequerred in all qualities	
Ţ	(viii)Discs, rings, forgings and Steel-castings	
	(ix)Tool, alloy and special steel of any of the above categories	
	(x)Steel melting scrap in all forms including steel skull, turnings and	
	borings	
	(xi)Steel tubes, both welded and seamless of all diameters and	
	lengths, including tube fittings,	,
	(xii)Tin-plates both hot dipped and electrolytic and tin free plates,	
	(xiii)Fish plate bars, bearing plate bars, crossing sleeper bars, fish	
	plates, bearing plates crossing sleeper and pressed steel	
	(xiv) Sleepers rail-heavy and light crane rails	
	(xv) Wheels, tyres, axles and wheel seats	
	(xvi) Wire rods and wire-rolled, drawn, galvanised, aluminised, tinned	
,	or coated such as by copper	
	(xvii) Defective, rejects, cuttings or end pieces of any of the above	
	categories	· · ·
		Farmanian in
44	Iron powder	Four paise in
		the rupee
45	IT products namely, computers, computer peripherals, digital	Four paise in
Ì	electronic equipment, communication equipment and components	the rupee
	thereof.	
46	Jute that is to say the fibre extracted from plants belonging to the	Four paise in
	species corchorous Capsularies and corchorous olitorous and the	the rupee
	fibre known as mesta or bimli extracted from plants or the species	
	hibiscus cannapinus and hibiscus sadarifavar altissima (and the fibre	•
	known as sunn, sunn-hemp extracted from plants of the species	
	Crotalaria juncea) whether baled or otherwise.	
47		Four paise in
71	Trestagette actaves und apare pares and added the analysis	the rupee
1.		

48	(i) Kirana and spices of all varieties and forms, as may be specified by the notification, including Amchur, Ajma (Ajwa), Asalia, Coconut copra, Dry fruits, Isabgul, Kalingada seeds, Khas khas (red poppy	Four paise in the rupee
	seeds), Jira (Cumin seeds), Variali (aniseeds), Methi (fengru seeds),	
	Suva, Dhana, dhana dal, and Pepper and spices,	
	(ii) Following goods, when sold in sealed packages under a brand:- (a)Flours of cereals and pulses in all forms other than wheat flour (b) Powder of <i>chillies</i> , tamarind of turmeric or powder of any other	
	Masala (c) Farsan that is to say eatables (other than sweet preparations) (d) Meat, Fish and all Sea food (e) Processed vegetables.	
49	Linear Alkyl Benzene (L.A.B.)	Four paise in the rupee
50	Milk powder whole or skimmed	Four paise in the rupee
51	Minerals and Ores	Four paise in
52	(i) Non-ferrous metals and alloys	the rupee Four paise in
٠.	(ii) Rolled and extrusion products, sheets, rods, bars, slabs, blocks, ingots, circle and scraps (made from non-ferrous metals and alloys),	the rupee
53	Oil cakes or de-oiled cakes of all types including cottonseed oilcake	Four paise in
- 4		the rupee
54	(i) Oilseeds of all types (ii) Peanuts	Four paise in the rupee
55	(iii) Other seeds not specified in schedule I Packing materials as may be specified by the Government	Fauraciacia
00	Facking materials as may be specified by the Government	Four paise in the rupee
56	(i) Papers of all types.	Four paise in
	(ii) Stationary articles such as – exercise books, graph book and laboratory note book, drawing books,	the rupee
	examination answer books, catalogues and publications to which entry 6 of Schedule I does not apply;	
	Pre printed or Printed material, calendar or Calendar <i>Datta</i> ; Charts, maps and globes for educational use.;	
	Writing instruments such as Fountain pens, stylograph pens,	
٠.	ball-point pens, Lead pencils and pencils of all types and spare parts and accessories of pens and pencils;	
	Slates and slates pencils and chalk sticks, crayons, foot rules, slide rules, geometrical instruments, mathematical instruments or parts	
	thereof or mathematical instruments boxes, school colour boxes, black	
	board, rubber erasers, pencil sharpners, dissection boxes, Audio picture cards, Printing ink, cartridges and toner, drawing pin, drawing brushes, rubber rings	
57	Pesticides, weedicides and insecticides	Four paise in
58	Pipes of all varieties including G.I. Pipes, C.I. pipes, ductile pipes and	the rupee Four paise in
9	PVC pipes Plastic footwear	the rupee Four paise in
	Tidous isotroni	the rupee

60	Readymade garments and articles prepared from any textile.	Four paise in
		the rupee
61	Renewable energy devices and spare parts thereof	Four paise in
·		the rupee
62	Raw wool and wool tops	Four paise in
		the rupee
63	Safety matches.	Four paise in
		the rupee
64.	Screen printing blocks meant for use in printing fabrics	Four paise in
		the rupee
65	Sewing machines	Four paise in
		the rupee
66	Silk fabrics	Four paise in
•		the rupee
67	Sim cards	Four paise in
		the rupee
68	Software	Four paise in
		the rupee
69	Soda ash	Four paise in
	Godd asi	the rupee
70	(i) Sport goods excluding footwear	Four paise in
70	(ii) Equipment of physical exercise	the rupee
	(ii) Equipment of physical exercise	ille rupee
71	Starches and maize flour and topioca flour	Four paise in
		the rupee
72	Steam	Four paise in
		the rupee
73	Sugar	Four paise in
	July 3.	the rupee
74	Sugarcane	Four paise in
•	, ouguround	the rupee
75	(i) Threads, twines, strings or ropes prepared from any material or	Four paise in
. •	goods or waste thereof.	the rupee
	(ii) Sewing threads.	and raped
	(iii) Varat and Varatdi	
76	Timru leaves or Beedi leaves	Four paise in
	Time touvos of Booki locatos	the rupee
77	(i)Tractors of all types, Power tillers and trailer of tractors	Four paise in
, ,	(ii)Tractors of all types, Fower thers and trailer of tractors	the rupee
78	(i)Transformers, switch gears, switch boards, and spares parts and	Four paise in
7 Q	accessories thereof	
	(ii) Transformer towers and parts there of.	the rupee
79	Umbrella of all types	Four poise in
13	Official of all types	Four paise in
00	I bounds of all bound	the rupee
80	Utensils of all types.	Four paise in
04	Manage of annual annual New York in the Company of	the rupee
81	Vessels of every description to be used for plying on water	Four paise in
00	(3.14)	the rupee
82	(i) Water pumps and water pumping sets including Centrifugal,	Four paise in
	monobloc or submersible pumps and parts thereof.	the rupee
	(ii) Hand pumps and parts and fittings thereof	
		.
ļ		1

83	Wet dates known as khajur.	Four paise in the rupee
84	Winding wires including super enamelled copper winding wire and plastic coated winding wire.	Four paise in the rupee
85	Wires, nails and blue tacks	Four paise in the rupee
86	(i) Yarn or yarn waste of all types (including cotton yarn) (ii) Fibres or fibre waste of all types.	Four paise in the rupee
87	All goods other than those specified in schedule I and in the preceding entries of this schedule.	Twelve and a half paise in the rupee

STATEMENT OF OBJECTS AND REASONS

A conference of the Chief Ministers and the Finance Ministers of the States and Union Territories held in November, 1999 under the Chairmanship of Union Finance Minister has resolved to implement Value Added Tax law by replacing the existing State Sales Tax laws.

Government of Gujarat had published for public debate, preliminary draft of Value Added Tax law. After considering suggestions received from the trade and industry, and the convergence achieved among the States, it has been decided to consolidate and amend the laws relating to levy and collection of tax on value added basis in respect of sales or purchases of goods in the State of Gujarat. States have attempted convergence on aspects concerning policy issues of value added tax, rates of tax and the lists of tax exempt goods and taxable goods. Following these attempts, the Government of Gujarat has made preparations for introduction of Value Added Tax from 1st April, 2003.

Under the Value Added Tax system, tax is to be levied on value addition at each stage of sales of taxable goods. Amount of tax paid on purchases is allowed to be deducted against tax liability on sales and consequently, there is no cascading of tax. Effective implementation of Value Added Tax will bring about transparency and remove deficiency in the existing tax system.

This Bill seeks to replace the Gujarat Sales Tax Act, 1969 and the Gujarat Purchase Tax on Sugarcane Act, 1989 to achieve the aforesaid objects.

The following notes on clauses explain the important provisions of the Bill:-

Clause 1.-- This clause provides for short title, extent and commencement of the Act.

Clause 2.-- This clause defines certain terms used in the Bill.

Clause 3.-- This clause deals with the liability of a dealer to pay tax. Dealers whose total turn over of sales and purchases of all goods exceeds rupees five lakhs in the previous year and whose taxable sales in the previous year exceed rupees ten thousand are liable to pay tax under this Act. All the dealers who are registered under the Gujarat Sales Tax Act, 1969 and Gujarat Purchase Tax on Sugarcane Act, 1989, as also all the dealers registered or liable to be registered under Central Sales Tax Act, 1956 will be covered for the purpose of incidence of tax under this Act.

Clause 4.-- This clause mentions those sales and purchases, for which the State does not have power to levy tax under the Constitution.

Clause 5.-- This clause provides for exemptions from tax in respect of the goods specified in Schedule I. This clause further seeks to provide for exemptions for classes of sales as may be notified by the State Government.

- Clause 7.-- This clause provides for multi-point levy of tax on turn over of sales of goods specified in Schedule II of the Bill. The rates of tax are specified in Schedule II.
- Clause 9.-- This clause provides for levy of purchase tax in the following circumstances:
 - (a) purchases by a registered dealer from a person who is not a registered dealer
 - (ii) purchases of sugarcane for use in manufacture. This tax on ad-valorum basis is proposed to be levied in place of the levy of purchase tax on ad-weight basis under the Gujarat Purchase Tax on Sugarcane Act, 1989,
 - (iii) purchase tax on convtravention of conditions by dealers.
- Clause 11.-- This clause seeks to provide for tax credit. Registered dealer who has paid the amount of tax while effecting purchases of taxable goods will be entitled to claim tax credit of such amount of tax and will be allowed to adjust such tax credits against his tax liabilities. Sub-clause (5) provides for certain circumstances in which tax credit is not allowed.
- Clause 12.- This clause provides for tax credit in respect of stock held by the dealers on the 31st March, 2003.
- Clause 13.-- This clause seeks to provide for net amount of tax payable by the dealer for a tax period.
- Clause 14.-- This clause provides for the option for payment of lump sum tax in lieu of tax on sale by the dealers whose total taxable turnover has not exceeded rupees twenty-five lakhs in the previous year. This option is available to those dealers who are not engaged in the activity of manufacture.
- Clause 16.- This clause provides for the appointment of tax authorities and jurisdiction and subordination of the officers under the Sales Tax Department.
- Clause 19.-- This clause provides for the constitution of Appellate Tribunal, qualifications of the members of the Tribunal and their disqualification.
- Clause 20.— This clause provides for powers of Tribunal and the Commissioner for the purposes of the Act.
- Clause 21.-- This clause provides for compulsory registration to be obtained by a dealer liable to pay tax.
- Clause 22.-- This clause seeks to provide for voluntary registrations for those dealers who are otherwise not required to obtain registration.
- Clause 23.-- This clause provides for deemed registration in respect of dealers who were registered under the earlier laws.

Clauses 25 to 27.— These clauses provide for continuation, amendment and cancellation of certificates of registration in certain circumstances.

Clause 28.-- This clause provides for security from certain class of dealers mainly for the purpose of safeguarding proper realization of Government dues under this Act.

Clause 29.-- This clause seeks to provide for periodical returns to be filed by the dealers.

Clause 30.-- This clause provides for periodical payment of tax to be made by the dealers.

Clause 31.-- This clause prohibits collection of tax except by those who are registered dealers.

Clause 32.-- This clause provides for scrutiny and provisional assessment of periodical returns.

Clause 33.-- This clause provides for annual returns to be filed by dealers. Such annual returns will be considered as self-assessment.

Clause 34.-- This clause provides for audit assessment in certain circumstances.

Clause 35.-- This clause provides for reassessment of cases, where turnover has escaped assessment.

Clauses 36 to 38.-- These clauses provide for refund of excess payment, provisional refund and interest on delayed payment of refund.

Clause 40.-- This clause provides for refund of tax for certain categories as may be notified by the State Government. This clause is essentially meant for refund to Embassies, International Organizations such as United Nations Organization etc.

Clause 42.-- This clause provides for payment and recovery of taxes arising from assessment, reassessment etc.

Clause 44.-- This clause provides for special mode of recovery from persons from whom any amount of money is due to be paid to the dealer who is required to make payment to the Government.

Clause 45.-- This clause provides for provisional attachment to protect the interests of the revenue.

Clause 46.-- This clause empowers the tax authorities for recovery of tax as arrears of land revenue.

Clause 47.-- This clause seeks to declare as void transfer of properties by a defaulting dealer to any other person with the intention to defraud the Government of its revenue.

Clause 48.-- This clause provides the Government dues to be first charge on the property or the person.

Clauses 49 to 58.-- These clauses provide for continuity of liability in certain circumstances, with reference to this Act or the earlier laws.

Clause 60.-- This clause provides for invoices to be given by registered dealers.

Clauses 62 to 64.- These clauses provide for the duties of dealers to maintain books of account and accounts to be audited in respect of dealers whose turnover exceeds rupees one crore.

Clause 67.-- This clause empowers the Commissioner for inspection of account and documents and search of premises.

Clause 68.-- This clause provides for inspection of goods in transit and at check posts for preventing evasion of tax.

Clause 9.— This clause provides for facility of transit pass for transit of goods cassing through the State.

Clauses 70 and 71.—These clauses deal with collection of statistics and furnishing of information.

Clause 72.-- This clause provides for special powers for reconstitution of records in certain circumstances.

Clauses 73 to 75.-- These clauses provide for appeal and revision.

Clause 74. This clause provides for non-appealable orders.

Clause 78.-- This clause provides for the case to be filed in High Court against the orders of Tribunal.

Clause 79.— This clause provides for rectification of mistakes in respect of any order.

Clause 80.-- This clause provides for the mechanism for determination of disputed questions.

Clauses 85 to 89.-- These clauses contain the normal provisions relating to offences and penalties, investigation and compounding.

Clause 94.-- This clause provides for bar of jurisdiction of civil courts to deal with any questions which the Tribunal or the tax authority is empowered to deal with.

Clause 98.-- This clause empowers the State Government to make by notification in the Official Gazette, rules for carrying out the purposes of the Act.

Clause 100.— This clause provides for repeal of the Gujarat Sales Tax Act, 1969 and the Gujarat Purchase Tax on Sugarcane Act, 1989 and the savings of the actions taken there under.

The Bill seeks to achieve above objects.

VAJUBHAI VALA

FINANCIAL MEMORANDUM

The Gujarat Value Added Tax Bill seeks to replace and repeal the Gujarat Sales Tax Act, 1969 and the Gujarat Purchase Tax on Sugarcane Act, 1989.

Clauses 16 and 19 relate to the appointment of Value Added Tax Authorities and constitution of Tribunal, respectively. As such administrative set up already exists for carrying into effect the provisions of the existing Act and the same set up shall continue for the implementation of the Value Added Tax. Hence, this Bill involves no addition financial impact from the point of view of expenditure.

VAJUBHAI VALA

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill provides for delegation of legislative powers in the following respects:--

Clause 1.— Sub-clause (3) of this clause empowers the State Government to appoint by notification in the Official Gazette, the date for bringing into force the remaining provisions of the Act and different dates may be appointed for different provisions;

Clause 2.-- (i) Sub-clause (5) empowers the State Government to notify other goods as 'capital goods';

- (ii) sub-clause (15) empowers the State Government to prescribe by rules, such manufactures or manufacturing processes which are not to be included in the definition of manufacture;
- (iii) Explanation (ii) below sub-clause (24) empowers the State Government by notification in the Official Gazette, to specify such works contract for the purpose of expression "works contract";
- (iv) sub-clause (29) empowers the State Government to prescribe by rules, month or a quarter of tax period;
- (v) paragraph (c) of sub-clause (31) empowers the State Government to prescribe by rules conditions for turnover of sale in relation to works contract. Proviso to this sub-clause also empowers the State Government to prescribe by rules the manner of calculation of charges for works contract.
- Clause 3.- Sub-clause (4) of this clause empowers the State Government to prescribe by rules, further period for continuing liability of a dealer to pay tax after the date of expiry of such period.
- Clause 5.- Sub-clause(2) of this clause empowers the State Government to exempt any class of sales or purchases from payment of whole of the tax by notification in the Official Gazette.
- Clause 6-. This clause empowers the State Government to prescribe by rules, the manner in which taxes shall be payable by a dealer.
- Clause 7.- Sub-clause (2) of this clause empowers the State Government to add to, omit from or otherwise amend or modify the Schedule by notification in the Official Gazette.
- Clause 11.- (i) Paragraph (b) of sub-clause (a) of this clause empowers the State Government to prescribe by rules, the manner for calculation of tax credit;
- (ii) sub-clause (2) empowers the State Government to prescribe by rules, the manner in which the dealer shall claim the tax credit and maintain registers and books of accounts;
- (iii) sub-clause (4) empowers the State Government to prescribe the form for a tax invoice for the purpose of evidencing the amount of tax credit;
- (iv) sub-clause (5) empowers the State Government to prescribe conditions subject to which a registered dealer shall be allowed to claim tax credit in respect of purchase tax paid by him;

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- (v) sub-clause (6) empowers the State Government to specify by notification in the *Official Gazette*, any goods or the class of dealers that shall not be entitled to whole or partial tax credit;
 - (vi) sub-clause (8) empowers the State Government to prescribe by rules, the manner of reduction in tex credit

- (vii) sub-clause (9) empowers the State Government to prescribe by rules, to determine the manner in which a registered dealer may claim net tax credit;
- (viii) sub-clause (10) empowers the State Government to prescribe by rules, the conditions subject to which the registered dealer shall compensate short or excess purchase by adjusting the amount of tax credit allowed to him;
- (ix) sub-clause (12) empowers the State Government to prescribe by rules, the exceptions subject to which any dealer including the commission agent shall not be permitted to transfer his tax credit.
- Clause 12.- (i) Sub-clause (1) empowers the State Government to prescribe the period within which and the form in which and the authority to whom a statement of taxable goods held in stock on the 31st March, 2003 shall be furnished for which the dealer intends to claim tax credit;
- (ii) paragraph (b) of sub-clause (3) empowers the State Government to prescribe by rules the conditions, restrictions and the manner subject to which tax credit shall be allowed to the dealer.
- (iii) sub-clause (5) empowers the State Government to prescribe by rules, the manner in which tax credit shall be calculated.
- Clause 13.- This clause empowers the state Government to prescribe by rules the manner in which net amount of value added tax shall be payable.
- Clause 14.- (i) Sub-clause (1) empowers the State Government to prescribe by rules, the conditions subject to which dealers can be permitted to pay lump-sum tax in lieu of the amount of tax payable under clause 7.
- (ii) sub-clause (2) empowers the State Government to fix the rate of lump sum tax by notification in the Official Gazette.
- Clause 16.- (i) Sub-clause (5) empowers the Commissioner to direct by order in the Official Gazette, any or all Joint Commissioners not to exercise such powers and perform such duties as may be specified in the order;
- (ii) sub-clause (7) empowers the State Government by notification in the *Official Gazette*, to delegate to the Commissioner the powers of the State Government subject to such restriction and conditions as may be laid down in the order;
- (iii) sub-clause (8) empowers the State Government to prescribe by rules, the subordination of the officers and persons amongst themselves.
- Clause 19.- (i) Sub-clause (3) empowers the State Government to prescribe by rules, the qualification of the members of the Tribunal;
- (ii) sub-clause (8) empowers the State Government to prescribe by rules, the conditions and limitations subject to which the

Tribunal shall have power to award the cost and recovery of such cost as arrears of land revenue;

- (iii) sub-clause (9) empowers the Tribunal to make regulations for regulating its procedure including the place or places at which the Tribunal or the Benches thereof shall sit and dispose of its business.
- Clause 21.- (i) Sub-clause (3) empowers the State Government to prescribe by rules, the form in which and the authority to whom every dealer shall apply for certificate of registration;
- (ii) sub-clause (4) of this clause empowers the State Government to prescribe by rules, the form in which the authority shall issue a certificate of registration;
- (iii) sub-clause (7) empowers the State Government to prescribe by rules, the manner in which the authority shall cancel the certificate of registration.
- Clause 22. Sub-clauses (1) and (2) of this clause empowers the State Government to prescribe by rules, the manner for applying voluntary certificate of registration and grant of certificate of registration by the authority in the form prescribed in this behalf.
- Clause 26.- Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the time limit within which a registered dealer shall apply to the authority for amendment of certificate of registration;
- Clause 27.- (i) Sub-clause (2) empowers the State Government to prescribe by rules, the manner and time within which a registered dealer shall apply for cancellation of certificate of registration;
- (ii) sub-clause (11) empowers the State Government to prescribe by rules, the manner in which the Commissioner shall publish the particulars of dealers whose certificate of registration has been cancelled.
- Clause 28.- (i) Sub-clauses (1) and (2) empower the State Government to prescribe by rules, the manner in which, the time limit within which and conditions subject to which security deposit and additional security deposit shall be furnished;
- (ii) sub-clause (5) empowers the State Government to prescribe by rules, the manner in which an insolvent dealer shall inform the Commissioner or the authority of his becoming insolvent;
- (iii) sub-clause (7) empowers the State Government to prescribe by rules, the manner and time limit in which the security furnished by any dealer if rendered insufficient shall make up the deficiency.
- Clause 29.— (i) Sub-clause (1) empowers the State Government to prescribe by rules, the form in which the period for which, the dates by which the authority to whom every registered dealer shall furnish correct and complete returns:

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- (ii) sub-clause (2) empowers the State Government to prescribe by rules, the terms and conditions subject to which the Commissioner may exempt any dealer from furnishing returns;
- (iii) sub-clause (3) empowers the State Government to prescribe by rules, the manner in which the notice shall be served upon a dealer whose total turnover is likely to exceed the thresholds of turnover.
- Clause 30.- Sub-clauses (1) and (2) of this clause empowers the State Government to prescribe by rules, the manner in which and intervals at which the tax shall be paid by the registered dealer.
- Clause 32.- (i) Sub-clause (2) empowers the State Government to prescribe by rules, the manner in which the Commissioner shall serve upon the registered dealer a notice requiring him to explain in writing regarding assessment on the basis of returns filed by him;
- (ii) paragraph (b) of sub-clause (2) empowers the State Government to prescribe by rules, the manner in which an order of the provisional assessment shall be served upon the dealer;
- (iii) sub-clause (3) empowers the State Government to prescribe by rules, the manner for the payment of tax assessed by the Commissioner on the basis of past returns and records and information received in case of non furnishing of returns by a registered dealer;
- (iv) sub-clause (4) empowers the State Government to prescribe by rules, the form in which the Commissioner shall give a notice to the dealer assessing the amount of tax payable by the dealer in cases where there is evasion of tax.
- Clause 33.- (i) Sub-clause (1) empowers the State Government to prescribe by rules, the dates by which, the form in which and the authority to whom the annual return of self assessment may be furnished;
- (ii) sub-clause (3) empowers the State Government to prescribe by rules, the form in which Commissioner shall send intimation regarding assessment made.
- Clause 34. Sub-clause (2) of this clause empowers the State Government to prescribe by rules, the manner in which the Commissioner shall serve a notice upon the dealer requiring him to appear on such date and at such place and to produce such records for the said purpose.
- Clause 37.- (i) Sub-clause (1) empowers the State Government to prescribe by rules, the form and manner in which the dealer shall apply to the Commissioner for grant of provisional refund pending assessment;
- (ii) sub-clause (2) empowers the State Government to prescribe by rules, the security to be furnished by the dealer claiming provisional refund.

- Clause 40.- (i) Sub-clause (1) empowers the State Government to authorise the Commissioner by notification in the Official Gazette, to grant refund of the amount of tax separately charge by any registered dealer to any class of persons who have purchased the goods;
- (ii) sub-clause (3) empowers the State Government to prescribe by rules, the manner in which and time within which any person shall apply to the authority for refund.
- Clause 41.- Sub-clause (2) of this clause empowers the State Government to prescribe by rules, the circumstances, conditions and time limit within which the Commissioner shall remit the whole or any part of tax penalty or interest.
- Clause 42.- Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the manner and time limit within which the tax assessed, reassessed or payable under clauses 33,34,35,75 and 79 shall be paid by the dealer together with penalty and interest.
- Clause 45.- Sub-clause (1) of this clause empowers the State Government to prescribe by rules, the manner in which the property belonging to the dealer shall be provisionally attached.
- Clause 50.- (i) Sub-clause (1) empowers the State Government to prescribe by rules, the manner in which the commission agent is not liable to pay tax if the tax has been paid by the principal on whose behalf the goods were purchased;
- (ii) sub-clause (3) empowers the State Government to prescribe by rules, the manner in which the commission agent shall satisfy the Commissioner that principal is not liable to pay tax again in respect of the same transaction.
- Clause 60.- (i) Sub-clause (1) empowers the State Government to prescribe by rules, the particulars in which a registered dealer shall provide tax invoice to another registered dealer;
- (ii) sub-clause (2) empowers the State Government to prescribe by rules, the particulars for retail invoice to be issued to the purchaser.
- Clause 61.- This clause empowers the State Government to prescribe by rules, the credit and debit notes containing certain particulars.
- Clause 62.- (i) Sub-clause (1) empowers the State Government to prescribe by rules, the form and manner in which accounts shall be maintained by every dealer:
- (ii) sub-clause (2) empowers the State Government to direct by notification in the *Official Gazette*, any class of registered dealer to keep accounts clear and intelligible for scrutiny.
- Clause 63.- Sub-clause (1) of this clause empowers the State Government to prescribe the form in which audit report shall be prepared,

and the authority to whom and the period by which the audit report shall be given.

- Clause 65.- This clause empowers the State Government to prescribe by rules, the form of declaration, the period within which and authority to whom it shall be sent by the dealer liable to pay tax.
- Clause 67.- (i) Sub-clause (1) empowers the State Government to prescribe by rules, the conditions subject to which Commissioner may require any dealer or any other person to produce books of account, registers or documents and such information relating to stock of goods, purchases, sales etc.;
- (ii) sub-clause (16) empowers the State Government to prescribe by rules, the terms and condition including furnishing of security for such amount and in such form for de-sealing the premises of the owner or the person in occupation or in-charge of shop, godown etc.;
- (iii) sub-clause (19) empowers the State Government to prescribe by rules, the manner in which auction of goods shall be carried out.
- Clause 68.- (i) Sub-clause (1) empowers the State Government direct by notification in the Official Gazette, to set up check posts or barriers:
- (ii) sub-clause (3) empowers the State Government to prescribe by rules, the log book, a bill of sale, delivery note and such other documents containing such particulars relating to goods carried in the vehicle or boat or the animal and to prescribe declaration containing particulars of goods carried in the vehicle to be given to the officer, incharge of the check post or barrier;
- (iii) sub-clause (5) empowers the State Government to prescribe by rules, the form of furnishing security by the driver or other person in-charge of a vehicle, boat or animal carrying goods to be given to in-charge of the check post or a barrier for release of good.
- Clause 71.- (i) Sub-clauses (1) and (2) empower the State Government by notification in the Official Gazette, to direct for collection of statistics relating to any matter dealt with by or under the Act, by notice in any newspaper or such other manner call upon any class of dealers to furnish information or statement or statistics and to prescribe the form, authority to whom and the intervals in which the information or return shall be furnished;
- (ii) sub-clause (3) empowers the State Government to prescribe by rules, to provide for furnishing such statements and returns under different provisions and by different class of registered dealers.
- Clause 73.- Sub-clause (6) of this clause empowers the State Government to prescribe by rules, the procedure subject to which appellate authority may pass such order on appeal.

Clause 76.-This clause empowers the State Government to prescribe by rules, the value of court-fees stamp on an appeal and an application for revision.

Clause 79.- Sub-clause (3) of this clause empowers the State Government to prescribe by rules, the manner for refund of any amount due to the person when tax; interest or penalty is reduced due to rectification of mistakes.

Paragraph (c) of sub-clause (1) of this clause empowers the State Government to prescribe qualifications for a sales tax practitioner.

Sub-clause (1) of this clause empowers the State Clause 88.-Government to prescribe by rules, the conditions subject to which the Commissioner may authorise investigation of offences punishable under the Act.

Clause 96.- This clause empowers the State Government to prescribe by rules, fee payable in court fee stamps for the applications referred to વહેરી મેરે ક્ષુણ છુટાની મેરિકા શકે માટે હોયે સુરાઇ હોર્ફ્ફોલ સુક

Clause 98.- This clause empowers the State Government to make, by notification in the Official Gazette, rules generally for carrying out the purposes of the Act and particularly for all or any of the matters specified in sub-clause (2) of this clause.

Clause 99. This clause empowers the State Government by order published in the Official Gazette, to make such provisions not inconsistent with the provisions of the Act as appear to it to be necessary or expedient for the removal of the difficulty. 电连续 医乳腺病 美国山村 黄

The delegation of legislative power as aforesaid is necessary and of a normal character.

Dated the 17th March,2003.

VAJUBHAI VALA.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Secretary to the Government of Gujarat,
Dated the 17th March, 2003. Legislative and Parliamentary Affairs Department.

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Gujarat Government Guzette EXTRAORDINARY

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> Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE BOMBAY MOTOR VEHICLES (TAXATION OF PASSENGERS) (GUJARAT AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 32 OF 2003.

A BILL

further to amend the Bombay Motor Vehicles (Taxation of Passengers) Act. 1958.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

This Act may be called the Bombay Motor Vehicles (Taxation of Short title and (1) Passengers) (Gujarat Amendment) Act, 2003.

It shall come into force at once. (2)

Bom, LXVII of 1958. IV of 1939. 59 of 1988.

In the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 (hereinafter referred to as "the principal Act"), in section 2, in clauses (4), (6), (7) and (10), for the words and figures "the Motor Vehicles Act, 1939" wherever they occur, the words and figures "the Motor Vehicles Act, 1988" shall be substituted.

Amendment of section 2 of Bom. LXVII of 1958.

Amendment of section 3 of Bom. LXVII of 1958. In the principal Act, in section 3, in sub-section (2), for the words "nearest naya paise, fractions of half a naya paise and over being counted as one and less than half being disregarded", the words "nearest rupee, the fraction of a rupee not exceeding fifty paise shall be ignored and the fraction of a rupee exceeding fifty paise shall be taken as a rupee" shall be substituted.

Amendment of section 14 of Bom. LXVII of 1958. 4. In the principal Act, in section 14, in sub-section (2), for the words and figures "Code of Criminal Procedure, 1898", the words and figures "Code of Criminal Procedure, 1973" shall be substituted.

v of 1998 2 of 1974.

STATEMENT OF OBJECTS AND REASONS

With a view to simplifying calculation and collection of tax under the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958, it is proposed that the fraction of rupee exceeding fifty paise be rounded off to the nearest rupee. Incidentally an opportunity is also taken to amend the references of old Motor Vehicles Act, 1939 and Code of Criminal Procedure, 1898 which are now replaced by the Motor Vehicles Act, 1988 and Code of Criminal Procedure, 1973 respectively in sections 2 and 14 of the said Act.

This Bill seeks to amend the said Act to achieve the aforesaid objects.

Dated the 21st March, 2003.

AMIT SHAH.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 21st March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT REGULARISATION OF UNAUTHORISED DEVELOPMENT (AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 33 OF 2003.

A BILL

further to amend the Gujarat Regularisation of Unauthorised Development Act, 2001.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Regularisation of Unauthorised Development (Amendment) Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

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Amendment of section 3 of Guj. 23 of 2001.

2. In the Gujarat Regularisation of Unauthorised Development Act, 2001 (hereinafter referred to as "the principal Act"), in section 3,-

Guj. 23 of 2001.

- (1) in sub-section (2), --
- (a) in clause (a), -
- (i) for the portion beginning with the words "per square meter of each category" and ending with the words "specified therein", the words "as may be prescribed by the State Government" shall be substituted;
- (ii) the provisos shall be deleted,
- (b) the TABLE OF FEES and Explanation thereunder shall be deleted;
- (2) in sub-section (3), in clause (b), to sub-clause (i), the following proviso shall be inserted, namely:-

"Provided that the provision of this sub-clause shall not apply to the buildings having ground plus one floor constructed as loadbearing structure.".

Insertion of new section 3A in Guj. 23 of 2001.

3. In the principal Act, after section 3, the following section shall be inserted, namely:-

Application of sections 3 and 4 in certain circumstances.

"3A. (1) The provisions of sections 3 and 4, as amended by the Gujarat Regularisation of Unauthorised Development (Amendment) Act, 2003, shall also be applicable where certificate referred to in sub-section (3) of section 3 has not been issued on the date of commencement of the said Act.

Guj. of 2003.

(2) The notice issued to the person under sub-section (2) of section 3 shall be deemed to be a notice issued under the provisions of this Act as amended by the Gujarat Regularisation of Unauthorised Development (Amendment) Act, 2003.".

Guj. of 2003.

Amendment of section 4 of Guj. 23 of 2001. 4. In the principal Act, in section 4, in sub-section (3), in clause (b), to sub-clause (i), after the existing proviso, the following proviso shall be inserted, namely:-

"Provided further that in case where it is not feasible to provide the parking facilities as mentioned above, the designated authorities may charge parking creation fee, as may be decided by the designated authority and facilitate in providing the required facilities or may provide for the same on the basis of build, own, operate and transfer on behalf of the defaulters."

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5. In the principal Act, in section 9, in sub-section (2), after clause (a), the following clause shall be inserted, namely:-

Amendment of section 9 of Guj. 23 of 2001.

"(aa) the rates of fees under sub-section (2) of section 3;".

STATEMENT OF OBJECTS AND REASONS

It has been represented to the State Government by the Municipal Corporations, Area Development Authorities, Urban Development Authorities and the private institutions regarding high rates of regularisation fees and non-availability of parking space within 500 metres vicinity of unauthorised developments which are to be regularised and have requested to amend the Gujarat Regularisation of Unauthorised Development Act, 2001 to that effect.

In order to overcome these difficulties, it is considered necessary to amend clause (a) of sub-section (2) of section 3 of the said Act. It is provided by amending clause (b) of sub-section (3) of section 4, that where it is not feasible to provide parking facilities within 500 metres vicinity of unauthorised development, designated authority shall provide required facility by charging parking creation fees or on the BOOT principle on behalf of the defaulters.

This Bill seeks to amend the said Act to achieve the aforesaid objects.

INDRAVIJAYSINH JADEJA

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers in the following respects:-

- Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the Official Gazette, a date on which the Act shall come into force.
- Clause 2.- Clause (a) of sub-section (2) of section 3 proposed to be amended by item (i) of para (a) of sub-clause (1) of this clause empowers the State Government to prescribe by rules, the fees to be paid to the designated authority for regularisation of unauthorised development.
- Clause 4.- The proviso proposed to be inserted to sub-clause (i) of clause (b) of sub-section (3) of section 4 by this clause empowers the designated authority to decide and charge the parking creation fees.

The delegation of the legislative powers as aforesaid is necessary and is of a normal character.

Dated the 22nd March, 2003.

INDRAVIJAYSINH JADEJA

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 22nd March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.





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PART - V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.).

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT (SUPPLEMENTARY) APPROPRIATION BILL, 2003.

GUJARAT BILL NO. 34 OF 2003.

BILL

to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Gujarat for the services of the financial year ending on the thirty-first day of March, 2003.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows :-

- This Act may be called the Gujarat (Supplementary) Appropriation Short title. Act, 2003.
- From and out of the Consolidated Fund of the State of Gujarat, there shall be paid and applied sums not exceeding those specified in column 3 of the Schedule hereto annexed amounting in the aggregate to the sum of twenty-two thousand four hundred sixty-nine crores, eighteen lakhs, twenty-one thousand rupees towards defraying the several charges which will come in course of payment during the financial year ending on the thirty-first day of March, 2003, in respect of the services and purposes specified in column 2 of the Schedule.
- The sums authorised to be paid and applied from and out of the Appropriation. Consolidated Fund of the State of Gujarat by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

Issue of Rs. 2,24,69,18,21,000 from and out of the Consolidated Fund of the State of Gujarat for the financial year

SCHEDULE (See sections 2 and 3)

No. of				Sums not exceeding		
Vote/ Appro- priation	Services and Purposes		· Voted	Charged on the Consolidated Fund	Total	
	2	•		3		
. 1	4		Rs.	Rs.	Rs.	
2	Agriculture	Revenue	ins.	1,12,000	1,12,000	
3	Minor Irrigation, Soil Conservation	Revenue	4,11,00,000		4,11,00,000	
	and Area Development			ing sa mga s Tangga sa mga sa mg		
4	Aniamal Husbandry and Dairy Development	Revenue	2,40,17,000		2,40,17,000	
	Development.	Capital	7,83,00,000		7,83,00,000	
<	Co-operation	Revenue	2,000	4,000	6,000	
	Co-operation	Capital	4,27,18,000	Lagragian (Arti	4,27,18,000	
	T. de continu	Revenue	2,000	tit la divini di la	2,000	
8	Education		5,71,92,75,000		5,71,92,75,000	
12	Energy Projects	Revenue	Tage of the Control		14,11,49,01,000	
		Capital	14,11,49,01,000			
13	Other Expenditure pertaining to Energy and Petro-Chemicals Department	Capital	1,000		1,000	
.14	Finance Department	Revenue ·	1,000		1,000	
15	Tax Collection Charges (Finance Department)	Revenue	2,25,78,000	en de la grande de La grande de la gra	2,25,78,000	
17	Pension and other Retirement Benefits	Revenue	97,87,00,000	ture of the second	97,87,00,000	
18	Other Expenditure pertaining to Finance Department	Capital	1,000		1,000	
19	Repayment of debt pertaining to Finance Department and its servicing	Revenue		2,63,02,19,000	2,63,02,19,000	
		Capital	n och o da galagi En	1,95,81,93,86,000	1,95,81,93,86,000	
25	Forests	Revenue	17,00,000	10,000	17,10,000	
		Capital	1,000		1,000	
30	Elections	Revenue	3,000		3,000	
32	General Administration Department	Revenue	2,000		2,000	
33	Economic Advice and Statistics	Revenue	3,000	V (,), (e)	3,000	
34	Other Expenditure pertaining to General Administration Department	Revenue	eran Director	91,000	22,51,25,000	
		6			in the second se	
38	Medical and Public Health (1994)	Revenue	. 7,000	Augusta (7,000	
39	Family Welfare	Revenue	1,000		1,000	

No. of			Sums not exceeding		
Vote/ Appro- priation	Services and Purposes		Voted	Charged on the Consolidated Fund	Total
1	2	· · · · · · · · · · · · · · · · · · ·	· · · · · · · · · · · · · · · · · · ·	. 3	
		*	Rs.	Rs.	Rs.
42	Police	Revenue	45,81,57,000	50,000	45,82,07,000
44	Transport	Revenue	1,000	NA	1,000
46	Other Expenditure pertaining to Home Department	Revenue	3,000	-	3,000
. 48	Stationery and Printing	Revenue	1,000		1,000
49	Industries	Revenue	2,000	•	2,000
50	Mines and Minerals	Revenue	1,000	0	6,000
51	Tourism	Revenue	1,000		1,000
55	Other Expenditure pertaining to	Revenue	26,95,000	•	26,95,000
با	Information and Broadcasting Department	Revenue			
60	Administration of Justice	Revenue		1,68,67,000	1,68,67,000
65	Narmada Development Scheme	Capital	2,73,00,00,000	-	2,73,00,00,000
66	Irrigation and Soil Conservation	Revenue	1,000	2,73,60,000	2,73,61,000
		Capital	-	1,50,29,000	1,50,29,000
67	Water Supply	Revenue	12,11,78,000	-	12,11,78,000
**		Capital (8,27,30,000		8,27,30,000
68	Other Expenditure pertaining to Narmada, Water Resources and	Revenue'	-	2,40,81,000	2,40,81,000
70	Water Supply Department Community Development	Revenue	4,000	_	4,000
. 70 71	Rural Housing and Rural	Revenue	2,000		2,000
. / 1	Development Development	110101111	_,		
. 72	Compensation and Assignments	Revenue	8,94,26,000	· · · · · · · · · · · · · · · · · · ·	8,94,26,000
75	Other Expenditure pertaining to Ports and Fisheries Department	Revenue	5,00,000		5,00,000
76	Revenue Department	Revenue	1,01,30,000	-	1,01,30,000
77	Tax Collection Charges (Revenue Department)	Revenue	20,27,000	25,000	20,52,000
	•				n an'oos
78	District Administraction	Revenue	1,50,000		2,28,000
81.	Compensation and Assignments	Revenue	. ,	1,00,000	1,00,000
		Capital	• • •	1,73,000	1,73,000

			Sums not exceeding		
No. of Vote/ Appro- priation	Services and Purposes		Voted	Charged on the Consolidated Fund	Total
1	2		•	3	
		1. -	Rs.	Rs.	Rs.
82	Other Expenditure pertaining to Revenue Department	Revenue	1,05,63,35,000), -	1,05,63,35,000
	Actions 2 of				5,85,000
- 84	Non-Residential Buildings	Revenue		5,85,000	
		Capital	2,000	•	2,000
85	Residential Buildings	Revenue	•	1,02,000	1,02,000
		Capital		3,36,000	3,36,000
	Roads and Bridges	Revenue	18,21,36,00	0 26,07,000	18,47,43,000
86	Kosos and Dringes	Capital		44,64,000	44,64,000
•	· /0.1		5,03,00,00	0 36,000	5,03,36,000
87	Gujarat Capital Construction Scheme	•	1,25,97,00		2,30,04,000
88	Other Expenditure pertaining to Roads and Buildings Department	Revenue	1,23,97,00	0 1,04,07,000	
90	Social Security and Welfare	Revenue	1,00		1,000
94	Tribal Area Sub-Plan	Revenue ;	· +	73,85,000	73,85,000
		Capital	1 N - 1	42,54,000	42,54,000
96	Youth Services and Cultural Activities	Revenue	1,09,52,00	00	1,09,52,000
100	Urban Development	Revenue	2,00	00 -	2,000
100	Women and Child Development	Revenue	10,71,0	00	10,71,000
	Department				
104	Other Expenditure pertaining to	Revenue	6,93,03,0	00	6,93,03,000
· :	Women and Child Development Department			and a state of the	
Total:		Revenue	9,02,91,02,0	2,72,00,88,000	11,74,91,90,000
		Capital	17,09,89,53,0	00 1,95,84,36,78,000	2,12,94,26,31,000
	CDAT	ND TOTAL	26,12,80,55,0	00 1,98,56,37,66,000	2,24,69,18,21,00

STATEMENT OF DEJEC (5 AND REASONS

This Bill is introduced in pursuance of article 204 of the Constitution of India read with article 205 thereof, to provide for the appropriation out of the Consolidated Fund of the State of Gujarat of the moneys required to meet the supplementary expenditure on certain services and purposes in relation to the financial year ending on the thirty-first day of March, 2003.

The amounts are shown below:-		Rs.	
(a)	Revenue Expenditure	11,74,91,90,000	
(b)	Capital Expenditure	2,12,94,26,31,000	
	Total :-	2,24,69,18,21,000	

Dated the 22nd March, 2003.

VAJUBHAI VALA.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 22nd March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.





The Gujarat Covernment Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE BOMBAY LAND REVENUE (GUJARAT AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 35 OF 2003.

A BILL

further to amend the Bombay Land Revenue Code, 1879.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

- 1. (1) This Act may be called the Bombay Land Revenue (Gujarat Amendment) Act, 2003.
 - (2) It shall come into force on the 1st April, 2003.

Short title and commencement. Amendment of section 67A of Bom. V of 1879.

In the Bombay Land Revenue Code, 1879 (hereinafter referred to as Bom. V "the principal Act"), in section 67A,-

of 1879.

- (1) in in sub-sections (1) and (2), for the words, brackets and figures "in column (3), (4), (5), (6) or (7)", the words, brackets and figures "in column (3) or (4)" shall be substituted;
- (2) sub-section (2A),
 - for the word, brackets and figure "column (6)", the (i) word, brackets and figure "column (4)" shall be substituted;
 - for the words, brackets and figures "columns (3), (4) and (ii) (5)", the word, brackets and figure "column (3)" shall be substituted;
- for the existing Table and Explanation thereunder, the following Table shall be substituted, namely:-

"TABLE

Sr. Area in which land is situated No.	. Rate of conversion tax per square metre of land			
	when land is to be used for temporary non-agricultural purpose or for residential purpose or for charitable purpose. when land is to be used for industrial purpose or for any other purpose.			
1 2	3 4			
Villages, Municipal boroughs, notified areas and cities having population not exceeding one lakh as per the last census.	Rs. 2.00 Rs. 6.00			
2. Municipal boroughs, notified areas and cities with a population exceeding one lakh as per the last census.	Rs. 10.00 Rs. 30.00".			

Explanation .- In the above Table, "municipal borough" or "notified area" means respectively a municipal borough or a notified area within the meaning of the Gujarat Municipalities Act, 1963.

Guj. 34 of 1964.

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to amend the Bombay Land Revenue Code, 1879 with a view to giving effect to the proposal contained in the Budget speech of the Finance Minister in the Legislative Assembly on the 27th February, 2003. The Bill seeks to revise the present rate of conversion tax and to simplify and rationalise the present structure thereof.

Dated the 22nd March, 2003.

KAUSHIK PATEL.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 22nd March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE BOMBAY STAMP (GUJARAT AMENDMENT)
BILL, 2003.

GUJARAT BILL NO. 36 OF 2003.

A BILL

further to amend the Bombay Stamp Act, 1958.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Bombay Stamp (Gujarat Amendment) Act, 2003.

Short title and commencement.

(2) It shall come into force on the 1st April, 2003.

Substitution of section 3A of Bom. LX of 1958.

2. In the Bombay Stamp Act, 1958 (hereinafter referred to as "the principal Act), for section 3A, the following section shall be substituted, namely:-

Bom. LX of 1958.

instruments chargeable with additional duty. "3A. (1) Every instrument chargeable with duty and described in the following articles of Schedule I when executed in respect of immovable property situated in the State shall, in addition to such duty, be chargeable with a duty at the rate of forty per cent. (including rate of stamp duty to be increased as provided for in sections 207 and 209 of the Gujarat Panchayats Act, 1993) of such duty, namely:

Guj. 18 of 1993.

- (1) No. 17 (Certificate of sale),
- (2) No. 20(a), 20(b) and 20(c) (Conveyance).
- (3) No. 26 (Exchange of property),
- (4) No. 27 (Further charge),
- (5) No. 28 (Gift),
- (6) No. 30 (Lease),
- (7) No. 36 (Mortgage-deed),
- (8) No. 45(f) (Power of Attorney when given for consideration and authorising the attorney to sell any immovable property),
- (9) No. 52 (Settlement),
- (10) No. 57 (Transfer of lease).
- (2) Except as otherwise provided in sub-section (1), the provisions of this Act and the rules made thereunder shall, so far as may be, apply in relation to the additional duty chargeable under sub-section (1) as they apply in relation to the duty chargeable under section 3."

Deletion of section 3B of Bom. LX of 1958.

3. In the principal Act, section 3B shall be deleted.

Amendment of Schedule I to Bom. LX of 1958.

- 4. In the principal Act, in Schedule I, -
- (1) in article 27, after clause (b), the following clause shall be inserted, namely:-
 - "(c) when original mortgage is one The same duty as is leviable of the description referred to in under article 6 (1) (a)."; clause (b) (i) of article 36.
- (2) in article 36,
- (a) for clause (b), the following clause shall be substituted, namely:-
 - "(b) When possession of the property or any part of the property

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comprised in such deed is not given or not agreed to be given, -

(i) in the case of such deed executed in respect of borrowing loans for residential purpose; The same duty as is leviable under article 6(1)(a).

(ii) in any other case

Subject to maximum of rupees two lakhs, two rupees for every hundred rupees or part thereof for the amount secured by such deed.":

(b) after Explanation I, the following Explanation II shall be inserted, namely:-

"Explanation II.- For the purpose of this article, the expression "residential purpose" means and includes acquiring of land, constructing, purchasing or repairing a dwelling house for own use."

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to amend the Bombay Stamp Act, 1958 with a view to giving effect to the proposal contained in the Budget Speech of the Finance Minister in the Legislative Assembly on the 27th February, 2003.

Dated the 22nd March, 2003.

KAUSHIK PATEL.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 22nd March, 2003. Secretary to the Government of Gujarat.

Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.





The Gujarat Government Gazette

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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE BOMBAY MOTOR VEHICLES TAX (GUJARAT AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 37 OF 2003.

A BILL

further to amend the Bombay Motor Vehicles Tax Act, 1958.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Bombay Motor Vehicles Tax Short title and (Gujarat Amendment) Act, 2003.

(2) It shall come into force on the 1st April, 2003.

Amendment of section 3 of Bom. LXV of 1958.

2. In the Bombay Motor Vehicles Tax Act, 1958 (hereinafter referred to as "the principal Act"), in section 3, in the proviso to sub-section (1), the words, figure and letter "section 3A or" shall be deleted.

Bom. LXV of 1958.

Amendment of section 4 of Bom. LXV of 1958.

3. In the principal Act, in section 4, in the Explanation, for the words, brackets and figures "sub-section (6) of section 9", the words, brackets, figures and letters "sub-section (6) of section 9, sub-section (1AA) of section 18" shall be substituted.

Insertion of new section 8A in Bom. LXV of 1958. 4. In the principal Act, after section 8, the following new section shall be inserted, namely:-

Interest on nonpayment of tax.

- "8A. (1) Where the whole or any portion of the tax due in accordance with the provisions of this Act in respect of any motor vehicle for any period or part thereof has not been paid in time by the person liable for the payment thereof, such person shall be liable to pay in addition to the tax so due, simple interest at the rate of two per cent. for each month or part thereof, on the amount of tax so due but not so paid or any less amount thereof remaining unpaid during such period.
- (2) In calculating the amount of interest payable under this section, the fraction of a rupee not exceeding fifty paise shall be ignored and the fraction of a rupee exceeding fifty paise shall be taken as a rupee.
- (3) Subject to such conditions as may be prescribed, the State Government may, if it considers it necessary so to do in the public interest, by an order remit the whole or any part of the interest payable under this section in respect of any specified period."

Amendment of section 12 of Bom. LXV of 1958.

5. In the principal Act, in section 12, for the word "tax", the words "tax, penalty or interest" shall be substituted.

Amendment of section 13 of Bom. LXV of 1958.

- 6. In the principal Act, in section 13, -
- (1) sub-section (1) shall be deleted;
- (2) in sub-section (2), the words, bracket and figure "other than those falling under sub-section (1)" shall be deleted;
- (3) the Explanation shall be deleted.

7. In the principal Act, in section 18, -

Amendment of section 18 of Bo LXV of 1958.

- (1) after sub-section (1A), the following sub-section shall be inserted, namely:-
- "(1AA) Where a register owner or any person in possession or control of an omnibus who is required to use or to keep for use such omnibus for the purpose for which it is registered is found using such omnibus other than that purpose, the Taxation Authority may levy a penalty equal to the monthly instalment of tax for that month payable in respect of the designated omnibus."
- (2) in sub-section (2), after the words, brackets, figure and letter "sub-section (1A)", the words, brackets, figures and letters "or sub-section (1AA)" shall be inserted.
- 8. In the principal Act, in section 23, in sub-section (2), in clause (b), the words, brackets, figures and letter "under sub-sections (2) and (3) of section 3A and" shall be deleted.

Amendment of section 23 of Born. LXV of 1958.

9. In the principal Act, in the First Schedule, -

Amendment of First Schedule to Bom. LXV of 1958.

- (1) in Part I,-
 - (a) for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted;
 - (b) in clause IV-AAA, in item (a), -
 - (i) for sub-item (i), the following shall be substituted, namely:-
 - "(i) Ordinary designated omnibuses licensed to carry not more than twelve passengers.

Rs. 1800 for every passenger which the vehicles is so licensed to carry.

(ii) Ordinary designated omnibuses licensed to carry more than twelve passengers but not more than twenty passengers.

Rs. 3800 for every passenger which the vehicle is so licensed to carry.";

- (ii) the existing sub-item (ii) shall be renumbered as sub-item (iii);
- (2) in Part II, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted.

Amendment of Second Schedule to Bom. LXV of 1958.

- 10. In the principal Act, in the Second Schedule, -
 - (1) in Part-I, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted;
 - (2) in Part-II, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted.

Amendment of Third Schedule to Bom. LXV of 1958

- 11. In the principal Act, in the Third Schedule, -
 - (1) in Part I, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted;
 - (2) in Part II, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted.

Amendment of Fourth Schedule to Bom, LXV of 1958.

- 12. In the principal Act, in the Fourth Schedule, -
 - (1) in Part-I, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted;
 - (2) in Part-II, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted.

Amendment of Sixth Schedule to Bom. LXV of 1958.

- 13. In the principal Act, in the Sixth Schedule,
 - (1) in Part-I, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted;
 - (2) in Part-II, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted.

Amendment of Eighth Schedule to Bom, LXV of 1958.

- 14. In the principal Act, in the Eighth Schedule, -
 - (1) in Part-I, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted;
 - (2) in Part-II, for the words "compressed natural gas", the words "compressed natural gas, liquid petroleum gas" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to amend the Bombay Motor Vehicles Tax Act, 1958 with a view to giving effect to the Budget proposal contained in the Budget Speech of the Finance Minister in the Gujarat Legislative Assembly on the 27th February, 2003.

Section 3A has been deleted by the Bombay Motor Vehicles Tax (Gujarat Amendment) Act, 2002 (Guj. 9 of 2002). Therefore, references of this section in the proviso to sub-section (1) of section 3 and in clause (b) of sub-section (2) of section 23 have been proposed to be deleted.

It is noticed that private omnibuses are clandestinely misused as transport vehicles for the carriage of passengers for hire or reward resulting in evasion of the tax and consequent loss of revenue to the Government. In order to prevent evasion of tax, it is proposed to amend section 18 so as to levy penalty equal to the monthly instalment of the tax payable in respect of such omnibus as designated omnibus.

Under the existing provisions of the Act, in addition to the tax, surcharge is levied at the rate of fifty per cent. of tax on vehicles using fuel other than motor spirit, compressed natural gas or operated by electric battery or solar energy. With a view to providing incentive for the motor vehicles using liquid petroleum gas which is conservative of petroleum produce and environment friendly, it is considered necessary to abolish such surcharge on the vehicles using liquid petroleum gas. The Schedules are proposed to be amended to provide accordingly.

This Bill seeks to amend the said Act to a chieve the aforesaid objects.

AMIT SHAH

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves the delegation of legislative powers in following respects:-

Clause 4.- Sub-section (3) of section 8A proposed to be inserted, empowers the State Government to prescribe by rules, the condition subject to which it may remit the interest payable under this section.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 22nd March, 2003.

AMIT SHAH.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Gandhinagar, Dated the 24th March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.





Government Gazette Gujarat **EXTRAORDINARY**

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PART - V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT APPROPRIATION BILL, 2003.

GUJARAT BILL NO. 38 OF 2003.

BILL

to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State of Gujarat for the services of the financial year ending on the thirty-first day of March, 2004.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

- This Act may be called the Gujarat Appropriation Act, 2003.
- From and out of the Consolidated Fund of the State of Gujarat, there may be withdrawn sums not exceeding those specified in column 3 of the Schedule hereto annexed amounting in the aggregate to the sum thirty-one thousand five hundred five crores, ninety-nine lakhs, twelve thousand rupees towards defraying the several charges which will come in course of payment during the financial year 2003-04 in respect of the services and purposes specified in column 2 of the Schedule.
- The sums authorised to be paid and applied from and out of the Appropriation. Consolidated Fund of the State of Gujarat by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

Short title.

Withdrawal of Rs. 3,15,05,99,12,000 from and out of the Consolidated Fund of the State of Gujarat for the financial year 2003-2004.

SCHEDULE
(See sections 2 and 3)

No. of				Sums not exceeding		
Vote/ Appro- priation	Services and Purposes		Voted	Charged on the Consolidated Fund	Total	
1	2			3	,	
			Rs.	Rs,	Rs.	
1,	Agriculture and Co-operation Department	Revenue	4,25,40,000		4,25,40,000	
2	Agriculture	Revenue	4,55,16,86,000	riski sa	4,55,16,86,000	
		Capital	50,00,000		50,00,000	
3	Minor Irrigation, Soil Conservation and Area Development	Revenue	37,06,10,000		37,06,10,000	
	and the second of the second	Capital	20,000	na property	20,000	
4	Animal Husbandry and Dairy Development	Revenue	59,22,04,000		59,22,04,000	
5	Co-operation	Revenue	36,51,58,000		36,51,58,000	
		Capital	8,21,82,000		8,21,82,000	
6	Other Expenditure pertaining to Agriculture and Co-operation Department	Capital	9,27,20,000		9,27,20,000	
7	Education Department	Revenue	2,92,45,000		2,92,45,000	
8	Education	Revenue	38,66,01,39,000	1,27,79,50,000	39,93,80,89,000	
9	Other Expenditure pertaining to Education Department	Revenue	1,13,80,000		1,13,80,000	
**		Capital	67,43,00,000	-	67,43,00,000	
10	Energy and Petro-Chemicals Department	Revenue	1,18,15,000) (p. g.) + g. tsippi - telepipe g. g. g. g.	1,18,15,000	
11	Tax Collection Charges (Energy and Petro-Chemicals Department)	Revenue	6,57,96,000) to the to be the total of the	6,57,96,000	
12	Energy Projects	Revenue	17,77,73,34,000	2,25,00,000	17,79,98,34,000	
		Capital	4,92,13,02,000)	4,92,13,02,000	
13	Other Expenditure pertaining to Energy and Petro-Chemicals Department	Revenue	15,00,000		15,00,000	
	parent and a second	Capital	5,78,00,000		5,78,00,000	
14	Finance Department	Revenue	6,85,00,000		6,85,00,000	
		Capital	9,00,000		9,00,000	
15.	Tax Collection Charges (Finance Department)	Revenue	66,78,87,000	ran en	66,78,87,000	
16	Treasury and Accounts Administration	Revenue	38,32,50,000	o de la companya de La companya de la co	38,32,50,000	

lo. of			Sums not exceeding		
Vote/ ppro- ladon	Services and Purposes		Voted	Charged on the Consolidated Fund	Total
1	2			3	
			Rs.	Rs.	Rs.
17	Pension and other Retirement Benefits	Revenue	13,07,49,00,000	10,00,000	13,07,59,00,00
18	Other Expenditure pertaining to Finance Department	Revenue	2,99,99,14,000		2,99,99,14,00
		Capital	3,59,25,000	1,00,000	3,60,25,00
19	Repayment of debt pertaining to Finance Department and its servicing	Revenue	•	52,00,10,72,000	52,00,10,72,00
		Capital		23,64,35,99,000	23,64,35,99,00
20	Food, Civil Supplies and Consumer Affairs Department	Revenue	7,09,17,000		7,09,17,00
21	Civil Supplies	Revenue	1,36,40,94,000	- *	1,36,40,94,00
22	Food	Revenue	11,54,60,000	• •	11,54,60,00
		Capital	6,00,000	r de	6,00.00
23	Other Expenditure pertaining to Food, Civil Supplies and Consumer Affairs Department	Capital	60,10,000		60,10,00
24	Forests and Environment Department	Revenue	1,89,75,000	<u>-</u>	. 1,89,75,0
25	Forests	Revenue	1,15,99,13,000		1,15,99,13,0
		Capital	95,61,88,000	·	95,61,88,0
26	- Environment	Revenue	5,84,00,000)	5,84,00,0
27	Other Expenditure pertaining to Forest and Environment Department	Capital	4,70,25,000	-	4,70,25,0
28	Governor	Revenue	* 	2,44,78,000	2,44,78,0
29	Council of Ministers	Revenue	2,93,51,000	-	2,93,51,0
30	Elections	Revenue	16,98,54,000	• • • • • • • • • • • • • • • • • • •	16,98,54,0
31 , .	Public Service Commission	Revenue	73,60,000	2,83,65,000	3,57,25,0
32	General Administration Department	Revenue	27,47,68,000	•	27,47,68,0
33	Economic Advice and Statistics	Revenue	8,03,35,000	-	8,03,35,0
34	Other Expenditure pertaining to General Administration Department	Revenue	8,72,20,31,000	6,10,000	8,72,26,41,0
		Capital	14,09,99,28,000)	14,09,99,28,0
35	State Legislature	Revenue	8,89,40,000	12,74,000	9,02,14,0
36	Loans and Advances to Government servants in Gujarat Legislature Secretariat	Capital	24,07,000)	24,07,0

No. of			Sums not exceeding			
Vote/ Appro- priation	Services and Purposes		Voted	Charged on the Consolidated Fund	Total	
1	2			3		
*********			Rs.	Rs.	Rs.	
37	Health and Family Welfare Department	Revenue	3,68,20,000		3,68,20,000	
38	Medical and Public Health	Revenue	7,02,57,56,000	•	7,02,57,56,000	
39 -	Family Welfare	Revenue	1,20,92,17,000	<u>-</u> .	1,20,92,17,000	
40	Other Expenditure pertaining to Health and Family Welfare Department	Revenue	13,35,000		13,35,000	
	Department	Osstal				
41	Home Department	Capital	6,20,70,000		6,20,70,000	
	Police	Revenue	4,56,15,000	-	4,56,15,000	
S 18 2 48	Jails	Revenue	7,40,24,99,000	•	7,40,24,99,000	
		Revenue	23,91,90,000	-	23,91,90,000	
44	Transport	Revenue	1,89,05,77,000		1,89,05,77,000	
		Capital	20,11,00,000	-	20,11,00,000	
	State Excise	Revenue	4,98,70,000	•	4,98,70,000	
	Other expenditure pertaining to Home Department	Revenue	56,27,89,000	3,00,000	56,30,89,000	
		Capital	1,49,73,36,000		1,49,73,36,000	
	ndustries and Mines Department	Revenue	4,68,29,000		4,68,29,000	
	Stationery and Printing	Revenue	36,81,47,000		36,81,47,000	
49 I	ndustries	Revenue	3,18,85,66,000	-	3,18,85,66,000	
•		Capital	23,55,50,000		23,55,50,000	
50 M	lines and Minerals	Revenue	19,35,50,000	-	19,35,50,000	
51 T	ourism	Revenue	23,05,96,000		23,05,96,000	
52 O	ther expenditure pertaining to idustries and Mines Department	Revenue	6,52,37,000		6,52,37,000	
		Capital	9,39,15,000		9,39,15,000	
53 In D	formation and Broadcasting epartment	Revenue	60,80,000		60,80,000	
54 In	formation and Publicity	Revenue	25,68,05,000	_	25,68,05,000	
In	ther Expenditure pertaining to formation and Broadcasting spartment	Revenue	2,08,40,000		2,08,40,000	
,		Capital	02.02.222			
56 La	bour and Employment Department		92,00,000	of and the second of the secon	92,00,000	
	bour and Employment	VCACHING.	2,37,00,000	-	2,37,00,000	

enderstellen i mentellen planteren betaren 15. den ikul berhalten bestellen austrialen i mentell. Ander 1500			Sums not exceeding			
No. of Vote/ Appro- priation	Services and Parposes		Voted	Charged on the Consolidated Fund	Total	
1	2			3		
			Rs.	Rs.	Rs.	
58	Other Expenditure pertaining to Labour and Employment Department	Capital	5,69,35,000	- , , , , , , ,	5,69,35,000	
59	Legal Department	Revenue	2,13,46,000	· · · · · · · · · · · · · · · · · · ·	2,13,46,000	
60	Administration of Justice	Revenue	1,10,00,43,000	14,62,44,000	1,24,62,87,000	
61 :	Other expenditure pertaining to Legal Department	Revenue	10,52,44,000	^ _ k	10,52,44,000	
, X		Capital	2,90,55,000	<u>.</u>	2,90,55,000	
62	Legislative and Parliamentary Affairs Department	Kevenue	1,99,70,000		1,99,70,000	
63	Other Expenditure pertaining to Legislative and Parliamentary	Capital	9,10,000		9,10,000	
64	Affairs Department Narmada, Water Resources and Water Supply Department	Revenue	5,26,15,000		5,26,15,000	
65	Narmada Development Scheme	Capital	7,37,95,22,000) - 1 . -	7,37,95,22,000	
66	Irrigation and Soil Conservartion	Revenue	- 20,45,70,55,000)	20,45,70,55,000	
	,	Capital	3,07,07,65,000	-	3,07,07,65,000	
67	Water Supply	Revenue	1,54,27,57,000	· - ,	1,54,27,57,000	
1000		Capital	3,60,07,00,000	-	3,60,07,00,000	
68	Other Expenditure pertaining to Narmada, Water Resources and Water Supply Department	Capital	14,36,00,000		14,36,00,000	
- 69.	Panchayats, Rural Housing and Rural Development Department	Revenue	2,71,60,000) · · · · · · · · · · · · · · · · · · ·	2,71,60,000	
70	Community Development	Revenue	2,50,92,24,00	0 -	2,50,92,24,000	
71	Rural Housing and Rural Development	Revenue	7,47,36,35,00	0 1,56,51,95,000	9,03,88,30,000	
	, , , , ,	Capital	3,22,50,00	0	3,22,50,000	
72	Compensation and Assignments	Revenue	68,31,42,00	0 -	68,31,42,000	
73	Other Expenditure pertaining to Panchayats, Rural Housing and	Revenue	77,33,20,00	0	77,33,20,000	
•	Rural Development Department	Capital	30,74,40.00	0 -	30,74.40.000	
74	Fisheries	Revenue	35,05,07,00	0 '-	35,05,07,000	
∤ ™	IV In addition to the control of the	Capital	4,31,75,00	00 -	4,31,75,000	
75	Other Expenditure pertaining to Ports and Fisheries Department	Revenue		4	89.30,000	
÷		Capital	31,00,00		31,00,000	

NI - A				Sums not exceeding		
No. of Vote/ Appro- priation	Services and Purposes		Voted	Charged on the Consolidated Fund	Total	
. 1	-2	<u></u>		3		
			Rs.	Rs.	Rs.	
76	Revenue Department	Revenue	7,42,60,000	-	7,42,60,000	
77	Tax Collection Charges (Revenue	Revenue	53,13,22,000		53,13,22,000	
	Department)				46.14.76.000	
78	District Administrartion	Revenue	46,14,76,000) - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -	46,14,76,000	
79	Relief on account of Natural Calamities	Revenue	6,31,84,00,000		6,31,84,00,000	
80 -	Dangs Disrict	Revenue	17,67,24,000)	17,67,24,000	
81	Compensation and Assignments	Revenue	22,86,80,000	8,00,000	22,94,80,000	
		Capital	1,97,00,000	2,00,000	1,99,00,000	
82	Other Expenditure pertaining to Revenue Department	Revenue	43,40,000		43,40,000	
3 ¹ 151		Capital	3,76,30,000) -	3,76,30,000	
83	Roads and Buildings Department	Revenue	6,18,00,000	•	6,18,00,000	
84	and the same of th	Revenue	2,17,81,78,000	13,50,000	2,17,95,28,000	
		Capital	99,35,16,000	o '	99,35,16,000	
. 85	Residential Buildings	Revenue	75,30,50,000	0 -	75,30,50,000	
, j		Capital	_ 17,79,40,000	0	17,79,40,000	
86	Roads and Bridges	Revenue	4,84,87,62,00	0. 3. 5. 5.	4,84,87,62,000	
		Capital	6,04,17,76,00	0	6,04,17,76,000	
87	Gujarat Capital Construction Schem	e Revenue	8,23,68,00	0	8,23,68,000	
		Capital	26,23,00,00	0	26,23,00,000	
88	Other Expenditure pertaining to	Revenue	11,26,60,00		11,26,60,000	
	Roads and Buildings Department		in state Time a			
		Capital	5,63,45,00	0 - "	5,63,45,000	
89	Science and Technology Departmen	t Revenue	38,29,26,00	0	38,29,26,000	
90	Other Expenditure pertaining to Science and Technology Departmen	Revenue	27,58,65,00	0	27,58,65,000	
· ´	and the second of the second o	Capital	10,14,15,00	0	10,14,15,000	
91	Social Justice and Empowerment Department	Revenue	2,14,60,00	0	2,14.60,000	
92	Social Security and Welfare	Revenue	1,94.74,22.00	85,00,000,	1,95,59,22,000	
		Capital	1,49,31,00	00 -	1,49,31,000	
93	Welfare of Scheduled tribes	Revenue	65,07,15,00	00	65,07,15,000	
F		Capital	1,30,00,00	00 - 0	1,30,00,000	

No. of	O. Of		Sums not exceeding		
Vote/ Appro- priation	Services and Purposes		Voted (Charged on the Consolidated Fund	Total
1	. 2,		<u> </u>	3	
			Rs.	Rs.	Rs.
94	Other Expenditure pertaining to Social Justice and Empowerment Department	Capital	1,47.30,000	•	1,47,30,000
95	Special Component Plan for Scheduled Castes	Revenue	2,97,66,66.000		2,97,66,66,000
		Capital	11,90,60,000		11,90,60,000
96	Tribal Area Sub-Plan	Revenue	8.31,27,99,000	· -	8,31,27,99,000
		Capital	1,26,13,20,000	·	1,26,13,20,000
97	Sports, Youth and Cultural Activities Department	Revenue	95,20,000		95,20,000
98	Youth Services and Cultural Activities	Revenue	. 25,17,05,000		25,17,05,000
99	Other Expenditure pertaining to Sports, Youth and Cultural Activities Department	Capital	19,55,000	-	19,55,000
100	Urban Development and Urban Housing Department	Revenue	1,72,65,000	· ·	1,72,65,000
101	Urban Housing	Revenue	11,04,45,000	56,54,53,000	67,58,98,000
102	Urban Development	Revenue	3,72,13,37,000	_	3,72,13,37,000
		Capital	1,01,00,000	- -	1,01,00,000
103	Compensation, Assignments and Tax Collection Charges	Revenue	74,36,00,000	24,00,03,000	98,36,03,000
104	Other Expenditure pertaining to Urban Development and Urban Housing Department	Revenue	1,13,85,000	-	1,13,85,000
		Capital	87,80,000	-	87,80,000
105	Women and Child Development Department	Revenue	57,80,000	• · · · · · · · · · · · · · · · · · · ·	57,80,000
106	Other Expenditure pertaining to Women and Child Development Department	Revenue	1,90,71,54,000	30,00,000	1,91,01,54,000
		Capital	10,10,000	1	10,10,000
	Total:	Revenue	1,88,64,34,81,000	55,88,80,94,000	2,44,53,15,75,000
		Capital	46,88,44,38,000	23,64,38,99,000	70,52,83,37,000
•	Grand Total:-	-	2,35,52,79,19,000	79,53,19,93,000	3,15,05,99,12,000

STATEMENT OF OBJECTS AND REASONS.

Article 204(1) of the Constitution of India requires that as soon as may be after the grants have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State, of all moneys required to meet-

- (a) the grants so made by the Assembly, and
- (b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the Statement previously laid before the Legislative Assembly.

The Bill accordingly specifies the gross amount required to meet grants made by the Assembly and the expenditure charged on the Consolidated Fund of the State for the financial year ending on the 31st March, 2004.

The a	mounts are shown below:-	Ks.
(a)	Revenue Expenditure	2,44,53,15,75,000
(b)	Capital Expenditure	70,52,83,37,000
	Total:	3,15,05,99,12,000

Dated the 26th March, 2003.

VAJUBHAI VALA.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 26th March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.





The Gujarat Covernment Gazette EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XLIV]

THURSDAY, MARCH 27, 2003/CAITRA 6, 1925

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE BOMBAY COURT-FEES (GUJARAT AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 39 OF 2003.

A BILL

further to amend the Bombay Court -fees Act, 1959.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Bombay Court-fees (Gujarat Amendment) Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Amendment of section 6 of Bom, XXXVI of 1959.

- 2. In the Bombay Court -fees Act, 1959 (hereinaster referred to as "the principal Act"), in section 6, -
- (l) in clause (iv),-
- (a) in sub-clause (a), for the words "fifteen rupees", the words "thirty rupees" shall be substituted;
- (b) in sub-clause (d),-
 - (i) for words "eighteen rupees and seventy- five naye paise", the words "forty rupees" shall be substituted;
 - (ii) in the proviso, for the words "fifteen rupees", the words "thirty rupees" shall be substituted;
- (c) in sub-clause (e), for the existing Table, the following Table shall be substituted, namely:-

"TABLE

AREA

(1)

FEES

(2)

(a) The area within the limits of the Municipal Corporation

One fourth of the advalorem fee leviable for a suit for possession of the servient tenement or the dominant tenement, whichever is less subject to a minimum fee of Rs. 30/-

(b) Area within the limits of the Municipality

One-sixth of the ad valorem fee leviable for a suit for possession of the servient tenement or the dominant tenement, whichever is less, subject to a minimum fee of thirty rupees.

(c) Any other area in the State of Gujarat.

Thirty rupees;".

- (d) in sub-clause (f),-
- (i) for the words "thirty rupees", the words "sixty rupees" shall be substituted;

- (ii) in the proviso, for the words "fifty rupees", the words "one hundred rupees" shall be substituted;
- (e) after sub-clause (h), the following sub-clauses shall be inserted, namely:-

for avoidance of sale, contract for sale etc.

"(ha). In suits for declaration that any sale or contract for sale or termination of the contract for sale, of any moveable or immoveable property is void - one half of ad valorem fee leviable on the value of the property;

for avoidance of acquisition proceedings.

- (hb). In suits for declaration that any proceedings for compulsory acquisition of any moveable or immoveable property are void one half of ad valorem fee leviable on the value of the property;";
- (f) in sub-clause (i), for the words "twenty rupees", the words "one hundred rupees" shall be substituted;
- (g) in sub-clause (j), for the words "thirty rupees", the words "one hundred rupees" shall be substituted;
- (2) in clause (v), -
- (a) in sub-clause (a), for the words "twelve and a half times", the words "twenty times" shall be substituted;
- (b) in sub-clause (b), for the words, "twenty times", the words "forty times" shall be substituted;
- (c) in sub-clause (c), for the words "twenty times", the words "forty times" shall be substituted;
- (3) in clause (viii), for the words "fifteen times", the words "thirty times" shall be substituted.
- 3. In the principal Act, in Schedule I, -
- (1) for Article I, the following shall be substituted, namely:-

Amendment of Schedule I to Bom. XXXVI of 1959.

		THE STATE OF THE S	Twenty
"1.	Plaint or memorandum	When the amount or value	
i	of appeal (not	the subject matter in	rupees.
	otherwise provided for	dispute	
	in this Act) or, of cross	does not exceed one	
,	objection presented to	hundred rupees.	
_	any Civil or Revenue		
		When such amount or value	. A ·
	Court.	exceeds one hundred rupees	Two rupees
		for every ten rupees, or part	
•		thereof, in excess of one	
		hundred rupees, upto one	
		thousand rupees.	
		When such amount or value	C
		exceeds one thousand	Twenty rupees
		rupees, for every hundred	
		rupees, or part thereof, in	
		excess of one thousand	
		rupees, upto ten thousand	
		rupees.	
	1 / / / / / / / / / / / / / / / / / / /		
		When such amount or value	One hundred
		exceeds ten thousand	twenty rupees
		rupees, for every one	
		thousand rupees, or part	
		thereof, in excess of ten	
		thousand rupees, upto	
		one lakh of rupees.	
1		One takit of rupees.	
		When such amount or value	Two hundred
		When such amount or value	No. 1
		exceeds one lakh of rupees	Tuhon
		for every ten thousand	
	1	rupees, or part thereof, in	
		excess of one lakh rupees:	
		Provided that the maxi-	
. '		mum fee leviable on the	
1	A Section of the sect	plaint or memorandum of	
9		appeal or of cross objection	1
•		shall be seventy- five	
. -		thousand rupees.";	
- F.		The state of the s	•

⁽²⁾ for article 10, the following shall be substituted, namely:-

"10. Probate of a will or letters of administration with or without will annexed."

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, on the part of the amount or value in excess of one thousand rupees, upto fifty thousand rupees.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds fifty thousand rupees, on the part of the amount or value in excess of fifty thousand rupees, upto two lakhs rupees.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakh rupees, on the part of the amount or value in excess of two lakhs rupees, upto three lakhs of rupees.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds three lakhs rupees, on the part of the amount or value in excess of three lakhs of rupees:

Provided that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827 or any corresponding law for the

XIX of 1925.

1

11.11.1

j*<u>i</u>c.

respect of any property
included in an estate, a
grant of probate or letters of
administration is made in
respect of the same estate,
the fee payable in respect of
latter grant shall be reduced
by the amount of the fee
paid in respect of the
former grant;".

in Article 13, in column 3, for the words "thirty rupees", the words "sixty rupees" shall be substituted;

i to me will double in

- in Article 15, in column 3, for the words "fifteen rupees", the words "thirty rupees" shall be substituted;
- (5) in Article 16, in column 3, for the words "fifty rupees", the words "one hundred rupees" shall be substituted;
- (6) in Article 17, in column 3, for the words "fifty rupees", the words "one hundred rupees" shall be substituted;
- (7) for the existing Table appearing after Article 17, the following shall be substituted, namely:-

"Table of rates of ad valorem fees leviable on the institution of suits.

When the amount But does of value of the not exceed	Proper fee
subject matter exceeds	
Rs.	Rs.
1 1000	10
1000 2000	200
2000	300
3000 4000	400
4000 in 572 70 2 2 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	500
5000 F 7 A 10 300 F 6000	600
6600 7000	700
AARS () A COO	800
The state of the s	900
9000 9000 10000	1000

			•	·
10000	Contract of	15000	1.000000	1250
15000	95877	20000	900000	1500
20000	05661	21000	800000	1525
— *· ·	OPPIS.	22000	7.00000	1600
21000	$\mathfrak{J}_{a,a}\mathfrak{F}_{a,a}$	23000	. GOVERNOS	1675
22000	1. P. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1.	24000	110000011	1750
23000	A. 16.		\$10.000M	1825
24000		25000	(*) +4(_j) ·	1900
25000		26000	NUCCOLU	1975
26000	\$ 185 °	27000	001.00c.	2050
27000		28000	00000007	
28000	74.14 cm	29000		2125
29000	CCC.	30000	Support Contract	2200
30000	Street .	32000	(A) (A) (B)	2375
	380	34000	AN THE	2500
32000	Q DH TELL	36000	Contraction Con	2650
34000	10 B 3/1	38000	銀行	2800
36000.	7.200	40000	10.15	2950
38000				3100
40000	, here en	42000	and the second of the second o	3250
42000		44000		3400
44000	•	46000		
46000		48000		3550
48000	٠.	50000		3700
50000		55000		4000
55000		60000		4300
and the second second		65000	in the state of the st	4600
60000		70000	Control of the Control	4900
65000		75000	and a second	5200
70000	100	12000	M. Charles Mr.	To the second

and the fees increases at the rate of Rs. 150 for every Rs.5,000 or part thereof, upto Rs.1,00,000 and over Rs. 1,00,000 at the rates of Rs. 200 for every rupees 10,000 or part thereof, upto Rs.10,00,000 and over Rs. 10,00,000 at the rate of Rs. 1,200 for every Rs.1,00,000 or part thereof, upto Rs.20,00,000 and over Rs. 20,00,000 at the rate of Rs.500 for every Rs.1,00,000 or part thereof, upto a maximum fee of Rs.75,000, for example :-

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Amendment of Schedule II to Bom. XXXVI of 1959.

- 4. In the principal Act, in Schedule II, -
- (1) in Article I, in column 3, -
- (a) for the words "Twenty naye paise", the words "Ten rupees" shall be substituted;
- (b) for the words "Thirty five naye paise", the words "Ten rupees" shall be substituted;
- (c) for the words "Sixty-five naye paise", the words "Twenty rupees" shall be substituted;
- (d) for the words "One rupee", the words "Fifty rupees" shall be substituted;
- (e) for the words "Two rupees fifty naye paise", the words "One hundred rupees" shall be substituted;
- (f) for the words "Fifty rupees", the words "One hundred rupees" shall be substituted;
- (g) for the words "Twenty rupees", the words "Fifty rupees" shall be substituted;
- (h) for the words "Five rupees", the words "Twenty rupees" shall be substituted;

- in Article 2, in column 3, for the words "Ten rupees", the words (2) "Fifty rupees" shall be substituted;
- (3) in Article 3, in column 3, for the words "Two rupees", the words "Five rupees" shall be substituted;
 - (4) in Article 4, in column 3, for the words "Fifty naye paise", the words "Two rupees" shall be substituted:
 - in Article 5, in column 3, for the words "One rupee", the words " Five rupees" shall be substituted;
 - (6) in Article 6, in column 3, -
 - for the words "Two rupees", the words "Ten rupees" shall be (a) substituted:
 - for the words "Five rupees", the words "Twenty rupees" shall be substituted;
 - in Article 7, in column 3, for the words "One rupee", the words "Ten rupees" shall be substituted;
 - in Article 8, in column 3, for the words "One rupee", the words "Ten rupees" shall be substituted;
 - (9) In Article 9, in column 3, for the words "One rupee twenty -five nave paise", the words "Five rupees" shall be substituted;
 - (10) in Article 10, in column 3, for the words "Twenty-five naye paise", the words "Two rupees" shall be substituted;
 - in Article II, in column 3, for the words "One rupee twenty-five naye paise", the words "Five rupees" shall be substituted;
 - (12) in Article 12, in column 3. -
 - for the words "One rupee", the words "Two rupees" shall be (a) substituted:
 - for the words "Two rupees", the words "Three rupees " shall be substituted;
 - for the words "Four rupees", the words "Five rupees" shall be (c) substituted;

- (13) in Article 13, in column 3, -
- (a) for the words "One rupee", the words "Two rupees" shall be substituted;
- (b) for the words "Two rupees fifty naye paise", the words "Five rupees" shall be substituted;
- (c) for the words "Five rupees", the words "Ten rupees" shall be substituted;
- (14) in Article 14, in column 3, -
- (a) for the words "Ten rupees", the words "Twenty rupees" shall be substituted;
- (b) for the words "Twelve rupees fifty naye paise", the words "Fifty rupees" shall be substituted;
- (15) in Article 15, in column 3, for the words "Fifty naye paise", the words "Five rupees" shall be substituted;
- (16) in Article 16, in column 3,
- (a) for the words "Five rupees", the words "Ten rupees" shall be substituted;
- (b) for the words "One rupee", the words "Five rupees" shall be substituted;
- (17) in Article 17, in column 3, for the words "Thirty -seven rupees fifty naye paise", the words "Fifty rupees" shall be substituted;
- (18) in Article 18, in column 3, -
- (a) for the words "Fifteen rupees", the words "One hundred rupees" shall be substituted;
- (b) for the words "Two rupees fifty naye paise", the words "Twenty five rupees" shall be substituted;
- (c) for the words "Six rupees twenty five naye paise", the words "Fifty rupees" shall be substituted;

- (d) for the words "Twelve rupees fifty naye paise", occurring at two places against items (c) and (d), the words "One hundred rupees " shall be substituted;
- (e) for the words "Twelve rupees fifty naye paise" against item (e), the words "Fifty rupees" shall be substituted;
- (19) in Article 19, in column 3, for the words "Twenty- five rupees", the words "Fifty rupees" shall be substituted;
- (20) in Article 20, in column 3, for the words "Thirty-seven fifty naye paise", the words "Fifty rupees" shall be substituted;
- (21) in Article 21, in column 3, for the words "Thirty -seven rupees fifty naye paise", the words "Fifty rupees "shall be substituted;
- (22) in Article 22, in column 3, for the words "Two rupees", the words "Fifty rupees" shall be substituted;
- (23) in Article 23, in column 3,
- (a) for the words "Thirty -seven rupees fifty naye paise", occurring at four places, the words "Fifty rupees" shall be substituted;
- (b) for the words "Eighteen rupees seventy- five naye paise" the words "Twenty rupees" shall be substituted;
- (c) for the words "Thirty rupees", the words "One hundred rupees" shall be substituted;
- (24) in Article 24, in column 3,
- (a) for the words "One rupee", the words "Two rupees" shall be substituted;
- (b) for the words "Two rupees", the words "Five rupees" shall be substituted;
- (25) in Article 25, in column 3, -
- (a) for the words "Two rupees", the words "Five rupees" shall be substituted;
- (b) for the words "Three rupees", the words "Ten rupees" shall be substituted;

- (c) for the words "Six rupees", the words "Fifteen rupees" shall be substituted;
- (26) in Article 26, in column 3, for the words "One rupee twenty-five naye paise", the words "Ten rupees" shall be substituted;
- (27) in Article 27, in column 3, for the words "Sixty-five naye paise", the words "Two rupees" shall be substituted;
- (28) in Article 28, in column 3, for the words "Two rupees", the words "Ten rupees" shall be substituted;
- (29) in Article 29, in column 3, for the words "One rupee", the words "Five rupees" shall be substituted;
- (30) in Article 30, in column 3, for the words "One rupee" the words "Five rupees" shall be substituted;
- (31) in Article 31, in column 3, for the words "One rupee", the words "Five rupees" shall be substituted;
- (32) in Article 32, in column 3, for the words "Five rupees", the words "Ten rupees" shall be substituted;
- (33) in Article 33, -
- (a) in column 1, the words and brackets "(of Ahmedabad)" shall be deleted;
- (b) in column 3, -
 - (i) for the words "Ten rupees", the words "Fifty rupees" shall be substituted;
 - (ii) for the words "Fifty rupees", the words "One hundred rupees" shall be substituted;
 - (iii) for the words "One hundred rupees", the words "Five hundred rupees" shall be substituted;
- (34) in Article 34, in column 3, -
- (a) for the words "Fifty rupees", the words "One hundred rupees" shall be substituted;
- (b) for the words "Ten rupees", the words "Fifty rupees" shall be substituted;

- (35) in Article 35, in column 3,-
- for the words "Two rupees fifty naye paise" occurring at two places, the words "Ten rupees" shall be substituted;
- (b) for the words "Five rupees", the words "Ten rupees" shall be substituted;
- (c) for the words "One rupee", the words "Ten rupees" shall be substituted, and the second of the second of
- and the first that is greater that the first and the first that th (36) in Article 36, in column 3, for the words "Five rupees", the words "Twenty rupees" shall be substituted;
- กระทร (สาร์ตรมโดยที่ได้เคียง) สาร (การาช การาชความสาร์ตรม (การาม เปรม หาก เมลาสังหา) (37) in Article 37, in column 3, for the words "One rupee", the words at the "Twenty rupees" shall be substituted; the de notice to the model. L. R. Vigot to I am the Street Street
 - (38) after Article 38, the following new Article shall be added, namely:-

"39. Application for adjournment presented Two rupees.". to the court in any proceedings

Guj. 12 of 1995.

The Bombay Court-fees (Gujarat Amendment) Act, 1995 is hereby Repeal. repealed.

STATEMENT OF OBJECTS AND REASONS (22)

As per the Budget Speech of the Einance Minister in the Legislative Assembly on the 27th February, 2003, it is proposed to increase the rates of Court fees, which are not revised since the enactment of the Bombay Courtfees Act, 1959. While increasing the rates of Court fees, the ideal concept of free Justice is tried to be balanced against the stark realities of constrains of finance. The principles enunciated by the Supreme Court in the case of P.M. Yashwant Narayan Setty Vs. State of Karnataka and others (A.I.R. 1989 S.C. 100) and in the case of All India Judges Association (AIR 1993 S.C. 2493) are also kept in view. In the case of Secretary, Government of Madras et everys. P.R. Shriramum (1996 (i) U.J.(SC) 612), at has been ruled that while fixing the rates of court fees, the State Government are justified in taking into account the frequent inflationary trends as well as the increased cost of administration of Justice. Over the years, litigations in the court has been increasing innumerably and consequently, expenses on Administration of Justice have increased manifold. With a view to meeting with the expenditure of Administration of Justice and to provide better services, it is considered necessary to enhance the rates of fees leviable on the various subject matters under the Act. Utmost care has been taken for small claimant keeping in view the fact that those who have less in life should have more in law. Therefore, the court fee leviable for claims upto Rs. 1,000/-, has been reduced to the extent of Rs. 10 By revising these rates, approximately 20 to 25 percentage of the expenditure of the Administration of Justice would be met out from such court fees.

This Bill seeks to achieve the aforesaid object.

ASHOK BHATT

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves delegation of legislative powers in the following respects:-

Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint by notification in the Official Gazette, the date on which the Act shall come into force.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 27th March, 2003.

ASHOK BHATT

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 27th March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.

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Gujarat Government Gazette **EXTRAORDINARY**

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT ADVOCATES WELFARE FUND (AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 40 OF 2003.

BILL

further to amend the Gujarat Advocates Welfare Fund Act, 1991.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows :-

(1) This Act may be called the Gujarat Advocates Welfare Fund (Amendment) Act, 2003.

Short title and commencement.

It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

40-1

Amendment of section 3 of Guj. 14 of 1991.

- 2. In the Gujarat Advocates Welfare Fund Act, 1991 (hereinafter referred to as "the principal Act"), in section 3, in sub-section (2), -
 - (a) in clause (d), the words "or any other association or institution or any other person" shall be added at the end;
 - (b) after clause (i), the following clause shall be added, namely:-
 - "(j) any amount by way of award of cost directed to be deposited in the Fund by the Bar Council of Gujarat, Bar Council of India, High Court of Gujarat or any other Court, Tribunal or Authority."

Amendment of section 6 of Guj. 14 of 1991. 3. In the principal Act, in section 6, for the words, brackets and figure "removed under sub-section (2)", the words, brackets and figure "disqualified under sub-section (1)" shall be substituted.

Amendment of section 7 of Guj. 14 of 1991.

- 4. In the principal Act, in section 7, -
 - (1) in sub-section (1), for the word "nominated", the words "nominated or for being a" shall be substituted;
 - (2) sub-section (2) shall be deleted.

Amendment of section 9 of Guj. 14 of 1991. 5. In the principal Act, in section 9, for the word "removal", the word "disqualification" shall be substituted.

Amendment of section 13 of Guj. 14 of 1991.

- 6. In the principal Act, in section 13, for sub-section (2), the following shall be substituted, namely:-
 - (2) The accounts of the Fund shall be audited annually by the Auditors duly qualified to act as Auditor under sub-section (1) of section 226 of the Companies Act, 1956 who shall be appointed by the Bar Council of Gujarat."

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Amendment of section 16 of Guj. 14 of 1991.

7. In the principal Act, in section 16, in sub-section (1), for the words "may apply in the prescribed form", the words "shall required to be a member of the Fund and shall apply in such form, in such manner and on payment of such fee as may be prescribed" shall be substituted.

Ensertion of new section 16A in Guj. 14 of 1991. 8. In the principal Act, after section 16, the following new section shall be inserted, namely:-

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Membership, subscription and cessation of membership.

- "16A. (1) Every member admitted to the Fund shall pay such subscription to the Fund as may be prescribed, at the end of block period of five years.
 - (2) The block period of five years shall commence from such date as may be specified by the Bar Council;
 - (3) Where any advocate fails to pay the subscription, as provided under sub-section (1), the Secretary of the Bar Council shall issue a notice for payment of subscription and after giving him a reasonable opportunity of being heard may pass such order regarding cessation of his membership or otherwise as he deems proper."
- 9. In the principal Act, in section 18, after sub-section (6), the following shall be inserted, namely:-

Amendment of section 18 of Guj. 14 of 1991.

- "(7) The amounts becoming payable to the member under section 24 shall be paid in such manner as may be prescribed.".
- 10. In the principal Act, for section 19, the following section shall be substituted, namely:-

Substitution of section 19 of Guj. 14 of 1991.

Vakalatnama to bear stamps.

- "19. (1) Every Advocate shall affix a stamp of value of -
 - (a) five rupees on every Vakalatnama filed by him in a District Court or a court subordinate to the District Court;
 - (b) ten rupees on every Vakalatnama filed by him in a Tribunal or other authority or High Court:

Provided that the Bar Council may prescribe the value of the stamps to be affixed under this sub-section:

Provided further that the Bar Council may prescribe different value of stamps to be affixed on every *Vakalatnama* to be filed in a District Court or a court subordinate to the District Court or a Tribunal or other authority or High Court.

(2) The value of the stamp shall neither be the cost in a case nor be collected in any event from the client.

- (3) Any contravention of the provisions of sub-section (1) or (2), by any Advocate, shall disentitle him either in whole or in part to the benefits of the Fund and the Administrative Committee shall report such contravention to the Bar Council for appropriate action.
- (4) Every stamp affixed on every *Vakalatnama* filed before a District Court or a court subordinate to the District Court or a Tribunal or other authority or High Court shall be cancelled in such manner as may be prescribed.".

mendment of ection 20 of Guj. 4 of 1991. 11. In the principal Act, in section 20, in sub-section (1), for the words "of four rupees with the Bar Council Emblem and its value inscribed thereon", the words "prescribed in section 19 with the Emblem of Bar Council" shall be substituted.

leletion of sections 1, 22 and 23 of luj. 14 of 1991. 12. In the principal Act, sections 21, 22 and 23 shall be deleted.

mendment of action 24 of Guj. 4 of 1991.

- 13. In the principal Act, in section 24, after clause (b), the following shall be added, namely:-
 - "(bb) to organise workshops, seminars, conferences and such other programmes for the benefit of the junior members of the Bar.".

STATEMENT OF OBJECTS AND REASONS

The Gujarat Advocates Welfare Fund Act, 1991 is in force in the State of Gujarat. The demand of the Bar Council of Gujarat is to widen the scope of receiving voluntary donations, contributions etc. from various individuals, institutions, the Bar Councils or the Bar Council of India etc. It would enable the Advocates Welfare Fund to serve their members better by augmenting various resources and effective utilization of the Funds. Some provisions on the lines of the Advocates Welfare Fund Act, 2001 (Central Act) for membership fees, renewal fee etc. have also been made for expanding the scope of the welfare measures and certain other benefits for undertaking different activities beneficial to the Advocates at large.

The Bill seeks to achieve the aforesaid objects. The following notes on clauses explain the important provisions of the Bill:-

- Clause 2.- This clause provides for receiving the amount from any association or institution, any Advocate or other person. It also provides for receiving the amount from the Bar Council, Bar Council of India, the High Court of Gujarat or any other court, Tribunal or authority.
- Clause 4.- This clause provides for deletion of sub-section (2) of section 7 which empower the State Government to remove any nominated member.
- Clause 6.- This clause makes provision for getting the Funds Accounts audited by an auditor to be appointed by the Bar Council. This is provided to simplify the procedure for auditing.
- Clause 7.- This clause provides for mandatory membership of the Fund its registration fees etc.
- Clause 8.- This clause provides for insertion of new section 16A which provides for membership, subscription and cessation of membership. This is in consonance with the similar provisions of the Central Act.
- Clause 9.- Power is taken under this clause to provide for manner in respect of any activities or schemes which may be undertaken under section 24.
- Clause 10.- On the lines of the Central Act this clause provides for advocates contribution by affixing on Vakalatnama stamps provided by the Bar Council to be of specific value. This also

- provides for prohibiting an Advocate not to collect the amount of stamp from his clients. This clause also provides for cancellation of the stamps.
- Clause 11.- This clause authorizes Bar Council to print and distribute the stamps of specific value alongwith its emblem.
- Clause 12. In view of new section 19, the provisions of sections 21, 22 and 23 are no longer required, hence these are deleted.
- Clause 13.- This clause add some more activities intended by the Bar Council by inserting new clause (bb) in section 24.

ASHOK BHATT

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves delegation of legislative powers in the following respects:-

- Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint the date on which the Act shall come into force.
- Clause 6.- Sub-section (2) of section 13 proposed to be substituted by this clause empowers the Bar Council to appoint the Auditor who is duly qualified to act as auditor under the Companies Act, 1956.
- Clause 7.- Sub-section (1) of section 16 proposed to be amended by this clause empowers the Bar Council to prescribe by regulations, the application form and the manner in which and the rates of registration fee which the Advocate shall pay together with the application for admission to the Advocates Welfare Fund.
- Clause 8.- New section 16A proposed to be inserted by this clause empowers the Bar Council to fix the subscription and the date of commencement of the block period of five years.
- Clause 9.- Sub-section (7) of section 18 proposed to be inserted by this clause empowers the Bar Council to specify the manner in which the amount becomes payable under the schemes framed under section 24.

- Clause 10.- This clause substitute section 19 which empowers the Bar Council to prescribe by regulations the value of stamps to be affixed under sub-section (1). It also empowers the Bar Council to prescribe different value of stamps to be affixed for different courts; sub-section (4) also empowers the Bar Council to prescribe by regulations, the manner in which the stamps shall be cancelled.
- Clause 13.- Clause (bb) of section 24 proposed to be inserted by this clause empowers the Bar Council to prescribe by regulations, the programmes like workshops, seminars and conferences for the benefit of the junior members of the Bar.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 27th March, 2003.

ASHOK BHATT.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar,
Dated the 27th March, 2003.

Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.

Government Central Press, Gandhinagar.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT STATE DISASTER MANAGEMENT BILL, 2003.

GUJARAT BILL NO. 41 OF 2003.

A BILL

to provide for effective management of disaster, for mitigation of effects of disaster for administering, facilitating, coordinating and monitoring emergency relief during and after occurrence of disasters and for implementing, monitoring and coordinating measures for reconstruction and rehabilitation in the aftermath of disasters, in the State of Gujarat and for these purposes to establish the Gujarat State Disaster Management Authority and to specify other agencies and for matters connected therewith or incidental thereto.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:--

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

- 1. (1) This Act may be called the Gujarat State Disaster Management Act, 2003.
 - (2) It extends to the whole of the State of Gujarat:
 - (3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Definitions.

- 2. In this Act, unless the context otherwise requires,
 - (a)"affected area" means the area declared as such under clause (a) of sub-section (2) of section 32;
 - (b) "appropriate authority" shall have the same meaning as in clause (iii) President's Act of section 2 of the Gujarat Town Planning and Urban Development No. 27 of 1976. Act, 1976;
 - (c) "Authority" means the Gujarat State Disaster Management Authority established under sub-section (1) of section 6;
 - (d) "capacity-building" means building of capacity to cope up with any disaster and includes—
 - (i) identification of existing resources relevant to any disaster, and resources to be acquired for the purpose of this Act;
 - (ii) acquiring and creating resources, organisation and training of groups in local community and
 - (iii) coordination of such training;
 - (e) "Chairperson" means the Chairperson of the Authority;
 - (f) "Chief Executive Officer" means the Chief Executive Officer of the Authority;
 - (g) "Commissioner" means the State Relief Commissioner appointed under section 11;
 - (h) "disaster" means an actual or imminent event, whether natural or otherwise occurring in any part of the State which causes, or threatens to cause all or any of the following:

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- (i) widespread loss or damage to property, both immovable and movable; or
- (ii) widespread loss of human life or injury or illness to human beings; or
- (iii) damage or degradation of environment;

and any of the effects specified in sub-clauses (i) to (iii) is such as to be beyond the capacity of the affected community to cope up with using its own resources and which disrupts the normal functioning of the community,

- (i) "disaster management" means a continuous and integrated process of planning and implementation of measures with a view to:
 - (i) mitigating or reducing the risk of disasters;
 - (ii) mitigating the severity or consequence of disasters;
 - (iii) capacity-building;
 - (iv) emergency preparedness;
 - (v) assessing the effects of disasters;
 - (vi) providing emergency relief and rescue; and
 - (vii) post-disaster rehabilitation and reconstruction;
- (j) "emergency preparedness" means the state of readiness which enables stake holders to mobilize, organize and provide relief to deal with an impending or actual disaster or the effects of a disaster;
- (k) "Local Authority" means a municipal corporation, nagar panchayat, municipal council, district panchayat, taluka panchayat, gram panchayat, notified area committee or cantonment board constituted under relevant local authority law;
- (l) "member" means a member of the Authority.
- (m)"mitigation" means measures aimed at reducing the impact or effects of a disaster;
- (n) "prescribed" means prescribed by rules made under this Act;
- (o)"prevention" means measures the object of which is to avoid the occurrence of a disaster;
- (p)"reconstruction" means repair and construction of a property undertaken after a disaster;
- (q)"regulations" means the regulations made under this Act;
- (r)"rehabilitation" means any activity the object of which is to restore normalcy in conditions caused by a disaster;
- (s)"relevant local authority law" means-

A CONTRACTOR OF THE STATE OF TH

(i) in relation to a City, Bombay Municipal Corporation Act, 1949;

Bom. LIX of 1949.

(ii) in relation to municipal borough, transitional area, smaller urban area and notified area, Gujarat Municipalities Act, 1963;

Guj. 34 of 1964.

(iii) in relation to a village, taluka and district, the Gujarat Panchayats Act, 1993;

Guj. 18 of 1993.

(iv) in relation to a cantonment, the Cantonments Act, 1924;

.....of 1924.

- (t) relief' means measures taken during or immediately after a declaration of disaster to diminish, or alleviate any suffering, pain, injury or distress or hardship caused on account of the disaster;
- (u) "stake holder" includes—

(i)any State Government;

(ii)any statutory functionary;

- (iii)voluntary agencies including foreign voluntary agencies and
- (iv)any other person identified by the Authority;

which participate in any manner in activities related to disaster management.

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CHAPTER II

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AUTHORITIES FOR DISASTER MANAGEMENT

Authorities for disaster management.

- 3. For the purposes of carrying out the objects of this Act, the following shall be the authorities, namely:--
 - (a) The State Government,
 - (b) The Gujarat State Management Auathority,
 - (c) Heads of Government Departments,
 - (d) Commissioner,
 - (e) Collector of a district,
 - (f) Local authorities.

CHAPTER III

FUNCTIONS OF STATE GOVERNMENT

4. (1) The State Government shall ensure that all the authorities specified in section 3 and stake holders shall take all such measures, as are necessary or expedient for the purpose of managing a disaster and mitigating its effects.

Functions of State Government.

- (2) In particular and without prejudice to the generality of the provisions of sub-section (1), such measures may include the following measures, namely:--
 - (a) ensuring that appropriate policies and guidelines are developed;
 - (b) establishing a group called the Crisis Management Group and such other entities as may be necessary and such group or entity shall exercise such powers and perform such functions as may be specified by the regulations;

(c) ensuring that the State administration and local authorities shall take into consideration the guidelines laid down by the Authority while planning its activities;

(d) ensuring that a comprehensive communication and technology network is established and maintained;

(e) facilitating procurement related to disaster management of materials, equipment and services in connection with the disaster management and ensuring their quality;

(f) ensuring that disaster management plans are prepared and training for managing disaster is given;

(g) promoting adequate risk transfer, risk sharing and cost-sharing mechanisms;

(h) ensuring that adequate funds are available for disaster management

(i) ensuring appropriate recovery measures; and

- (j) taking such steps and issuing such directions as may be necessary to prevent escalation of the disaster or to alleviate, contain or minimise the effects of disaster.
- (3) Subject to the provisions of this Act, the State Government, may in exercise of its powers and performance of its functions under this Act, issue a direction in writing to a person or authority for the purpose of avoiding an imminent damage arising out of a disaster or mitigation of its effects and such person or authority shall comply with such direction.

(4) Subject to the provisions of this Act, the State Government may in exercise of its powers and performance of its functions, under this Act suspend operation of any executive order if such executive order prevents, hinders or delays any necessary action in coping with disaster.

CHAFTER W

FUNCTIONS OF DEPARTMENTS OF STATE GOVERNMENT

hunctions of Department's of Coverns ant.

- 5. (1) The government densitment of the State small-
 - (a) provide as ituance to the Authority, Con missioner, the Collectic and the local authority in setting up communication centers, dr. wing up contingency plans, capacity building, data collection and identifying and training personnel;

(b) carry out relief operations under the supervision of the Commissioner and the Collector,

- (c) assess the damage and carry out reconstruction and rehabilitation activities in accordance with the guidelines framed by the Authority; and
- (d) take such steps and provide such assistance to the Authority, Commissioner and the Collector as may be necessary for disaster management.
- (2) Every department of the Government under the supervision of the Authority shall-

(a) prepare a disaster management plan setting out -

- (i) the manner in which the concept and principles of disaster management shall be applied;
- (ii) role and responsibilities of department in respect of the state disaster management;
- (iii) role and responsibilities of the department in respect of emergency relief and post disaster recovery and rehabilitation;
- (iv) capacity to fulfill roles and responsibilities of the department;
- (v) particulars of strategies pertaining to disaster management; and
- strategies and procedures in the event of a disaster, including measures to finance the strategies;
- (b) co-ordinate preparation and the implementation of plan with other departments, local authorities, communities and stake holders;

(c) regularly review and update the plan; and

(d) submit to the Authority disaster management plan and any amendments thereto.

CEAPLES V

ESTABLISHMENT AND CONSTITUTION OF AUTHORITY

6 (1) The State Government shall, by notification in the Official Gazette, establish an Authority by the name of Gujarat State Disaster Management Authority with effect from such date as may be specified in the notification.

Establishment and incorporation of Authority.

- (2) The Authority shall be a body corporate, with perpetual succession and common seal and may sue or be sued in its corporate name and shall, subject to the provisions of this Act, be competent to acquire, hold and dispose of property, both movable and immovable, and to contract and do all things necessary for the purposes of this Act.
- (3) The head quarters of the Authority shall be at such place as the State Government may, by notification in the *Official Gazette*, specify.
- (4) The Authority may, with the approval of the State Government, establish offices at such other places within or outside the State as the Authority thinks fit.
- 7. (1) The Authority shall consist of Chairperson and not more than fourteen other members as follows, namely:--

Constitution of Authority.

(a) the Chief Minister of the State, ev-officio, who shall be the Chairperson;

- (b) two Ministers nominated by the Chief Minister by virtue of their office from amongst the Council of Ministers of the State;
- (c) the Chief Secretary of the State, ex-officio;
- (d) the Secretary to Government of Gujarat, Revenue Department, ex-officio;
- (e) the Chief Executive Officer of the Authority, ex-officio;
- (f) the State Relief Commissioner, ex-officio,
- (g) the Director General of Police of the State, ex-officio;
- (h) such other officers of the State Government as may be appointed by the State Government by virtue of their office:

Provided that when a proclamation made under article 356 of the Constitution is in force in the State, the Central Government may appoint three persons, in place of the Chief Minister and other two Ministers, to be the Chairperson and members of the Authority and the persons so appointed shall

vacate their office upon the revocation or cesser of operation of such proclamation.

(2) The members of the Authority shall hold office during the pleasure of the State Government and shall receive such remuneration as may be prescribed.

Meetings of Authority.

(1) The Authority shall meet at such times and places and shall, subject to the provisions of sub-section (2), observe such rules of procedure in regard to the transaction of its business at its meetings (including quorum at such meetings) as may be provided by the regulations.

- (2) Every meeting shall be presided over by the Chairperson, if he is present at the time appointed for holding the same and, if the Chairperson is absent, by the senior Minister or in his absence, by the other Minister and, in absence of both the Ministers, by such one of the members present as may be chosen by the meeting to be Chairperson for the occasion
- (3) All the questions at a meeting of the Authority shall be decided by a majority of votes of the members present and voting and, in the event of an equality of votes, the Chairperson shall have and exercise a second or casting vote.
- (4) (a) Every member, who is, in any way whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement, entered into or proposed to be entered into, by or on behalf of the Authority, shall disclose the nature of his concern or interest before or at a meeting of the Authority.
 - No member shall take any part in discussion, or vote on, any contract or arrangement entered into or to be entered into by or on behalf of the Authority if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement:

Provided that a member shall not be deemed to be concerned or interested as aforesaid by reason of his being a shareholder holding directly and indirectly in the aggregate less than two per cent of the paid-up equity share capital of a company concerned or interested in any such contract or arrangement.

No act or proceeding of the Authority shall be invalid merely by reason ofProceedings presumed to be good and valid.

any vacancy therein or any defect in the constitution (a) thereof, or

(b) any irregularity in its procedure not affecting the merit of the case.

Officers and employees of Authority.

- 10. (1) The State Government shall appoint an officer not below the rank of Secretary to Government to be the Chief Executive Officer of the Authority who shall perform such functions as are prescribed by regulations.
 - (2) The Authority may appoint such other officers and employees subordinate to the Chief Executive Officer as it considers necessary for the efficient performance of its functions.
 - (3) The Chief Executive Officer appointed under sub-sections (1) shall be entitled to receive such salary and allowances and shall be governed by such conditions of service as may be prescribed.
 - (4) The officers and employees appointed under sub-section (2) shall be entitled to receive such salaries and allowances and shall be governed by such terms and conditions of service as determined by the regulations.
 - (5) The officers and employees of the Authority shall perform such functions as may be imposed upon them by a general or special order in writing issued by the Chief Executive Officer.

State Relief Commissioner.

- 11. (1) The State Government may appoint for the whole State an officer not below the rank of Secretary to Government, to be the State Relief Commissioner,
- (2) The Commissioner shall perform such functions related to disaster management as are imposed on him by or under this Act,
- (3) The Commissioner shall be entitled to receive such salary and allowances and shall be governed by such conditions of service as may be prescribed.

CHAPTER VI FUNCTIONS OF AUTHORITY

12. (1) Subject to the provisions of this Act, the Authority shall be primarily responsible for promoting an integrated and coordinated system of disaster management including prevention or mitigation of disaster by the State, local authorities, stake holders and communities,

Certain functions of Authority.

(2) The Authority shall-

- (a) act as the central planning, coordinating and monitoring body for disaster management and post-disaster reconstruction, rehabilitation, evaluation, and assessment;
- (b) assist the State Government in formulation of policy relating to emergency relief notwithstanding that the implementation of emergency relief shall be the responsibility of the Revenue Department and other departments of the Government;
- (c) inform the State Government and departments of Government on progress and problems in disaster management;
- (d) promote general education and awareness on disaster management, emergency planning and response;
- (e) and matters incidental thereto.
- (3) The State Government, the Collector, concerned officers of the State Government and the local authorities in the State shall give such assistance and support to the Authority in performing its functions as may be required by the Authority
- 13. (1) The Authority shall take reasonable steps to collect or cause to be collected data on all aspects of disasters and disaster management and analyze such data; and cause and conduct research and study relating to the potential effects of events that may result in disasters;

Data collection.

- (2) The Authority may, by notice in writing, require any person to provide such information as may be useful for the purpose of sub-section (1) to the Authority within such period as may be specified in the notice.
- (3) The Authority shall ensure that any information furnished by a person under sub-section (2) shall not be divulged except for the purpose of performing its functions under this Act.

Repository of information.

- 14. The Authority shall act as a repository of information concerning disasters and disaster management, and shall—
 - (a) establish an institute;
 - (b) ensure the establishment of communication links and setting up of emergency communication and early warning systems in the State;
 - (c) maintain databases of information required for the disaster management operations;
 - (d) ensure establishment of communication links with disaster management agencies in India and other countries, including institutions performing functions similar to those of the Authority;
 - (e) to exchange information, and to have access to international expertise on disaster management.

Disaster management plans.

- 15. (1) The Authority shall develop or cause to be developed guidelines for the preparation of disaster management plans and strategies and keep them up-date and shall assist such departments of Government, local authorities and person, as may be specified by the Authority in preparation of plans and strategies and coordinate them.
 - (2) The plan preparing authority while preparing the plan under sub-section (1) shall make suitable provision in the plan after considering the following namely:—

- (a) the types of disaster that may occur and their possible effects;
- (b) the communities and property at risk;
- (c) provision for appropriate prevention and mitigation strategies;
- (d) inability to deal with disasters and promote capacity-building;
- (e) the integration of strategies for prevention of disaster and mitigation of its effects with development plans, programmes and such other activities in the State;
- (f) provision for assessment of the nature and magnitude of the effects of a disaster;
- (g) contingency plans including plans for relief, rehabilitation and reconstruction in the event of a disaster, providing for
 - (i) allocation of responsibilities to the various stake holders and co- ordination in carrying out their responsibilities;
 - (ii) procurement of essential goods and providing essential services;
 - (iii) establishment of strategic communication links;
 - (iv) dissemination of information; and
 - (v)other matters as may be provided for in the regulations.
- (h) any other matter required by the Authority.
- (3) The Authority shall prepare, or cause to be prepared, and maintain a master plan for the State.
- 16. (1) The Authority shall promote or cause to be promoted awareness and preparedness and advise and train the community, and stake holders with a view to increasing capacity of the community and stake holders to deal with potential disasters by -

and preparedness.

Awareness

- (a) publishing guidelines and recommendations in this behalf;
- (b) facilitating access to its electronic database;
- promoting disaster management capacity building and training programs amongst communities and other stake holders;

- (d) assisting in the development of methodologies for reduction of vulnerability of disasters;
- (e) coordinating the integration of methodologies for awareness and preparedness with development plans, programmes and such other activities; and
- (f) acting in any other manner as it deems fit in this behalf;
- (2) The Authority shall formulate such policy relating to mechanisms for risk transfer including insurance for disaster preparedness as it deems necessary and implement the same or cause to be implemented.

Recommendations to be made to appropriate authority.

- 17. (1) The Authority may recommend the appropriate authority to take into consideration the matters to be specified by the authority for mitigation of a disaster while preparing new plans;
 - (2) The Authority may inspect existing development plans made by the appropriate authority and may recommend the appropriate authority to vary the plan after considering matters for mitigation of disaster specified by the authority;
 - (3) The Authority may inspect the quality of construction of any building or structure in any local area in the State and where the Authority is of the opinion that the quality of construction of such building or structure is such that it may result in loss of life or damage to any property if a disaster occurs, it may recommend the local authority to take such action as may be necessary under the relevant local authority law to avoid such a consequence.

Relief.

- 18. (1) The Authority shall assist the State Government in formulating policies relating to relief activities.
- (2) Where the Authority is of the opinion that the relief provided by the Commissioner or the Collector is not adequate the Authority shall recommend

the Government to modify the norms followed by the Commissioner or the Collector and, where necessary, recommend other relief measures.

Rehabilitation and reconstruction.

19. On the expiry of a disaster declaration, the Authority shall, where necessary, act as an agency for facilitating and coordinating rehabilitation and reconstruction activities by departments of the Government.

CHAPTER VII

POWERS AND FUNCTIONS OF CHIEF EXECUTIVE OFFICER

Powers and functions of the Chief Executive Officer.

- 20. (1) The Chief Executive Officer shall exercise and perform the following powers and functions, namely:--
 - (a) coordinate and monitor activities relating to prevention and mitigation of disasters, including capacity building;
 - (b) coordinate and monitor rehabilitation and reconstruction activities;
 - (c) monitor the progress of the preparation and updating of disaster management plans and coordinate the implementation of such plans;
 - (d) prepare and submit periodically a report to the Authority on the activities undertaken by the Authority
 - (e) delegate his powers and functions to officers and employees of the Authority.
 - (f) to exercise such powers and perform such functions as may be delegated by the Authority;
 - (g) to exercise such other powers and perform such other functions as may be specified by the regulations.

CHAPTER VIII

POWERS AND FUNCTIONS OF STATE RELIEF COMMISSIONER

Emergency Relief.

- 21. (1)During the period an area is an affected area, the Commissioner may issue directions to the Collector and the local authority having jurisdiction over the affected area to provide emergency relief in accordance with disaster management plans.
 - (2) For the purpose of -
 - (a) assisting and protecting the community;
 - (b) providing relief to the community;
 - (c) preventing or combating disruption; or
 - (d) dealing with the destructive and other effects of the disaster, the Commissioner may-
 - (i) make arrangements for release and use of available resources;
 - (ii) control and restrict vehicular traffic to, and from and within the affected area;
 - (iii) control and restrict the entry of any person into, movement within and departure from an affected area;
 - (iv) remove debris;
 - (v) conduct search and rescue operations;
 - (vi) make arrangements for the disposal of the unclaimed dead body;
 - (vii) provide alternative shelter;
 - (viii) provide food, medicines and other essentials;
 - (ix) require experts and consultants in the fields relevant to the disaster to provide relief under his direction and supervision;

- (x) procure exclusive or preferential use of amenities as and when required;
- (xi) to take possession and make use of any property, vehicles, equipment, buildings and means of communication on such terms and conditions as may be prescribed;
- (xii) construct temporary bridges or other necessary structures;
- (xiii) demolish unsafe structures which may endanger the public;
- (xiv)) ensure that non-governmental organizations carry out their activities in an equitable manner;
- (xv) disseminate information to the public to deal with the disaster;
- (xvi) evacuate any population from any affected area for the purpose of preservation of life and for such evacuation use such force as may be necessary; and
- (xvii) authorize any person, to make any entry into any place, to open or cause to be opened, any door, gate or other barrier, if he considers such an action is necessary for preservation of life and property, if the owner or occupier is absent, or being present, refuses to open such door, gate or barrier;
- (3) The Commissioner may issue such directions to any person or government agency and take such other steps as may be necessary to curtail the escalation of the disaster or to alleviate, contain or minimise the effects of disaster.
- (4) The Commissioner shall keep the Authority informed of the actions taken by him generally for providing relief and particularly under sub-sections (1) to (3).

Other functions of Commissioner.

22. (1) The Commissioner shall-

- (a) provide inputs to the Authority relating to various aspects of disaster management, such as early warnings and status of preparedness;.
- (b) develop an appropriate relief implementation strategy for the State in consultation with the Authority, taking into account the unique circumstances of each district and deficiency in institutional capacity and resources of the State;
- (c) prepare, review and update a State level emergency plans and guidelines and ensure that the district level plans are prepared, revised and updated;
- (d) reassess from time to time contingency plans related to disaster management;
- (e) ensure that disaster management drills are carried out periodically; and
- (f) ensure that communications systems are in order, and contingency plans provide for maximum involvement of local agencies;
- (g) exercise such powers and perform such functions as may be delegated by the Authority;
- (h) exercise such other powers and perform such other functions as may be specified by the regulations.

CHAPTER IX

POWER AND FUNCTIONS OF COLLECTOR

Powers and functions of Collector.

- 23. (1) During the period an area is an affected area the Collector may issue directions to the officers of the departments of the Government and the local authority in the affected area, to provide emergency relief in accordance with the disaster management plans.
 - (2) The Collector may-

(i)make arrangements for release and use of available resources;

(ii)control and restrict traffic to, from and within the area affected by a disaster;

(iii)control and restrict the entry into, movement within and departure from any disaster area or part of it;

(iv)remove debris;

(v)conduct search and rescue operations;

(vi)make arrangements for the disposal of the unclaimed dead, by appropriate means;

(vii)provide alternative shelter;

(viii)provide food, medicines and other essentials;

- (ix)require experts and consultants in the matters relevant to the disaster to provide relief under his direction and supervision;
- (x) to take possession and make use of any property, vehicles, equipment, buildings and means of communication on such terms and conditions as may be prescribed.
- (xi) procure exclusive or preferential use of amenities as and when required;
- (xii) construct temporary bridges or other structures; (xiii) demolish unsafe structures which may endanger the public;
- (xiii) co-ordinate with non-governmental organizations and ensure that such entities carry out their activities in an equitable manner;

- (xiv) disseminate information to the public to deal with the disaster;
- (xv) direct and compel evacuation, of all or part of the population from any affected area for the purpose of preservation of life and for such evacuation, and for such evacuation use such force as may be necessary;
- (xvi) authorize any person, to make any entry into any place, to open or cause to be opened, any door, gate or other barrier, if he considers such an action is necessary for preservation of life and property, if the owner or occupier is absent, or being present, refuses to open such door, gate or barrier.
- (2) The Collector may exercise the powers contained in sub-section (2) to the extent only that it is necessary for the purpose of
 - (a) assisting and protecting the community;
 - (b) providing relief to the community;
 - (c) preventing or combating disruption; or
 - (d) dealing with the destructive and other effects of the disaster.
 - (3) The Collector may issue such directions to any person or government agency and take such other steps, as may be necessary to curtail the escalation of the disaster or to alleviate, contain or minimize the effects of disaster.

Other powers and functions.

- 24. (1) Collector shall,-
 - (a) ensure that actions for prevention of a disaster or mitigation of its effects or preparedness to cope up with such effects are carried out in accordance with guidelines as may be prescribed;

- (b) provide inputs to Authority relating to various aspects of disaster management, such as early warnings and status of preparedness;.
- (c) ensure that officials in the district acquire the knowledge to deal with disaster management;
- (d) ensure that district disaster management plans are prepared, revised and updated;
- (e) facilitate and, co-ordinate with, local Government bodies to ensure that pre-disaster and disaster management activities in the district are carried out;
- (f) facilitate community training, awareness programmes and the installation of emergency facilities with the support of local administration, non-Government organizations, and the private sector;
- (g) establish inter-department coordination on matters related to disaster management;
- (h) review emergency plans, contingency plans and guidelines;
- (i) ensure that local authorities in the district are involved in developing their own mitigation strategies;
- (j) ensure linkage between disaster management activities and planning
- (k) ensure that communications systems are in order;
- (l) ensure that fire fighting equipment and other equipments related to disaster management are so maintained as to be ready for use;
- (m) coordinate the activities of reconstruction and rehabilitation in the district;
- (n) ensure that disaster management drills are carried out periodically;
- (o) assist the Authority in monitoring the progress and outcome of efforts for reconstruction and rehabilitation;
- (p) exercise such powers and perform such functions as may be delegated by the State Government, the Authority and the Commissioner;
- (q) exercise such other powers and perform such other functions as may be prescribed.

CHAPTER X FUNCTIONS OF LOCAL AUTHORITIES

Functions of local authority.

- 25. (1) For the purpose of disaster management, local authority shall, subject to such directions as the Authority may give and under the supervision of the Collector-
 - (a) assist the Authority, the Commissioner and the Collector;
 - (b) ensure that the staff of the local authority is trained;
 - (c) ensure that all resources related to disaster management are so maintained as to be ready for use;
 - (d) ensure that all buildings and other structures in the local area comply with the specifications laid down in this behalf by the . departments of Government and the Authority;
 - (e) carry out relief operations in the affected area subject to directions of the Commissioner;
 - (f) carry out reconstruction and rehabilitation activities in accordance with the guidelines framed by the Authority;
 - (g) prepare a disaster management plan setting out the following, namely:-
 - (i) the manner in which the concept and principles of disaster management are to be applied in local area;
 - (ii) role and responsibilities of the local authority in the terms of the disaster management plan of the State;
 - (iii) capacity of the local authority to fulfill its role and responsibilities;
 (iv) particular activities
 - (iv) particulars of disaster management strategies; and
 - (v) contingency strategies and emergency procedures in the event of a disaster, including measures to finance the strategies;
 - (h) co-ordinate the preparation and the implementation of plan with those of the organizations of the State and stake holders;

- (i) regularly review and update the plan.
- (j) conduct disaster management drills periodically; and
- (k) provide such assistance to the Authority, the Commissioner and the Collector and take such other steps as may be necessary for disaster management.
- (2) Each local authority shall submit to the Authority and the Commissioner a copy of its disaster management plan proposed under sub-section (1) and any amendment thereto.

Disaster management plans for districts.

- 26. (1) Each department of the Government in a district shall prepare a disaster management plan for the district and the Collector shall ensure that such plans are integrated into the disaster management plan for the whole of the district.
 - (2) The department of Government while preparing a plan under sub-section (1)-
 - (a) anticipate the types of disaster that may occur in the district and their possible effects;
 - (b) identify the communities and property at risk;
 - (c) provide for appropriate prevention and mitigation strategies;
 - (d) identify the inability to deal with possible disasters and promote capacity building;
 - (e) facilitate maximum emergency preparedness; and
 - (f) keep contingency plans and prescribed emergency procedures in the event of a disaster, providing for,-
 - (i) allocation of responsibilities to the various stake holders and co-ordination in the carrying out of their responsibilities;
 - (ii) prompt disaster response and relief;
 - (iii) procurement of essential goods and the providing of essential services;
 - (iv) establishment of strategic communication links;
 - (v) the dissemination of information; and

(vi) such other matters as may be provided for in the regulations and any other matters required by the Collector.

- (3) A department of the Government shall subject to the supervision of the Collector-
 - (a) prepare a disaster management plan setting out the following, namely:--
 - (i) the manner in which the concept and principles of disaster management are to be applied in the district;
 - (ii) role and responsibilities of the department of Government in terms of the disaster management plan of the State;
 - (iii) role and responsibilities of the department of Government regarding emergency relief and post disaster recovery and rehabilitation;
 - (iv) capacity of the department of Government to fulfill its roles and responsibilities;
 - (v) particulars of disaster management strategies; and
 - (vi) contingency strategies and emergency procedures in the event of a disaster, including measures to finance the strategies;
 - (b) co-ordinate the preparation the implementation of its plan with those of other organizations of the State, communities and other stake holders;
 - (c) regularly review and update the plan; and
 - (d) submit a copy of its disaster management plan, and of any amendment thereto to the Collector.
- (4) The Collector shall submit a copy of the district disaster management plan, and of any amendment thereto to the Authority and the Commissioner.
- (5) Each department of the Government shall be responsible for effective implementation of the plans drawn up in this behalf.

CHAPTER XI

DUTIES OF POLICE FORCE, GRAM RAKSHAK DAL, HOME GUARDS, CIVIL DEFENCE AND FIRE SERVICES

27. (1) Where an area is declared under clause (a) of sub-section (2) of section 32 as an affected area, the members of—

Duties of Police Force, Gram Rakshak dal, Home Guards etc.

- (a) police force,
- (b) gram rakshak dal,
- (c) home guards,
- (d) civil defense and
- (e) fire services

shall perform the following functions under the supervision of the Commissioner and the Collector, namely:--

- (i) giving of warning,
- (ii) carrying out search and rescue operations and
- (iii) carrying relief and rehabilitation operations.
- (2) If a disaster occurs in any area, the senior most officer from amongst the members of organizations specified in clauses (a) to (e) and of a local authority and department of the Government in such area shall report to the Collector and carry out any instructions which the Collector may issue for providing emergency relief.
- (3) The department of the Government in the State shall generally carry out the functions specified in its disaster management plan as directed by the Collector and in particular--
 - (a) ensure that the communication system is in order, which shall be made available, free of charge, for being used for transmission and receipt of messages in connection with a disaster;

- (b) identify the personnel and provide adequate training for the purposes of disaster management so that the services of such personnel are readily available;
- (c) conduct disaster management drills periodically and;
- (d) provide such assistance to the Authority, the Commissioner and the Collector and take such other steps as may be necessary for disaster management.

CHAPTER XII

DUTIES OF COMMUNITIES, PRIVATE SECTOR ENTERPRISES AND OTHER AGENCIES OR PERSONS

Duties of community groups and youth organizations. 28.Each community group and each youth organization such as the National Cadet Corps, National Service Scheme, Nehru Youth Kendra may-

- (a) assist the State Government, the Authority, the Commissioner and the Collector in all disaster management activities;
- (b) participate in capacity building, vulnerability reduction programmes and training activities;
- (c) assist in relief operations under the supervision of the Commissioner and the Collector;
- (d) assist in conducting detailed damage assessment and in carrying out reconstruction and rehabilitation activities in accordance with the guidelines framed by the Authority;
- (e) provide such assistance to the Authority, the Commissioner and the Collector and take such other steps as may be necessary for disaster management.

29. (1) Each Factory as defined under the Factories Act 1948, shall--

Duties of factories, private and public sector entities. PART V

- (a) assist the State Government, the Commissioner and the Collector in all disaster management activities;
- (b) ensure that their staff are adequately trained;
- (c) ensure that all necessary resources are in a ready-to-use state;
- (d) ensure that its buildings and other structures are in compliance with all specifications stipulated by the departments of the Government and the Authority;
- (e) carry out relief operations under the supervision of the Commissioner and the Collector;
- (f) assist in conducting damage assessment and in carrying out reconstruction and rehabilitation activities in accordance with the guidelines framed by the Authority;
- (g) prepare a disaster management plan in conformity with the other disaster management plans of local authorities departments of Government having regard to the guidelines laid down in this behalf by the Authority;
- (h) take all other steps and provide such assistance to the Authority, the Commissioner and the Collector and take such other steps as may be necessary for disaster management.
- (2) Each factory shall be responsible for effective implementation of the plan drawn up by it in this behalf.
- (3) Each private and public sector entity shall provide assistance to the Authority, the Commissioner, the Collector and take such other steps as may be necessary for disaster management.
- 30. All voluntary agencies, including non-governmental organizations, which desire to participate in disaster management activities may,--

Duties of voluntary agencies.

- (a) participate in capacity building, vulnerability reduction programmes and training activities;
- (b) assist in relief operations under the supervision the of Government, the Commissioner and the Collector;

- (c) assist in assessing damage and in carrying out reconstruction and rehabilitation activities in accordance with the guidelines framed by the Authority;
- (d) provide such assistance to the Authority, the Commissioner and the Collector as may be necessary for effective disaster management.

Duties of citizens.

- 31. It shall be the duty of every citizen to assist the Commissioner, the Collector or such other person entrusted with or engaged in disaster management whenever his aid is demanded generally for the purpose of disaster management and particularly for the following purposes, namely:-
 - (a) prevention,
 - (b) response,
 - (c) warning,
 - (d) emergency operation,
 - (e) evacuation and
 - (f) recovery.

CHAPTER XIII.

DECLARATION OF AREA AS DISASTER PRONE AREA OR DISASTER AFFECTED AREA

Declaration of an area as disaster prone area or disaster affected area.

32.

- (1) Where there is threat of an impending disaster or where a disaster has occurred—
 - (a) in an area spread over more than one district, the Commissioner, and
 - (b) in an area restricted to a district, the Collector
 may immediately make a report to that effect to the State
 Government.
 - (2) (a) If the State Government, on the report of the Commissioner or of the Collector under sub-section (1) or otherwise, is of the opinion that there is a threat of an impending disaster or that a disaster has occurred in

an area of the State and that it is expedient, for the purposes of preventing such disaster or of coping with its effects, it may, by notification published in the Official Gazette, and in any one or more newspapers having widest circulation in the area, declare such area to be disaster prone area or disaster affected area (hereinafter in this section referred to as "the affected area").

(b) Where the State Government decides not to make declaration under clause (a), it shall send a communication accordingly to the Commissioner or, as the case may be, the Collector.

(3)A notification issued under section (2) in respect of an area shall specify the period not exceeding fifteen days during which the area shall, for the purposes of this Act, be the affected area:

Provided that the State Government may extend such period from time to time by any period not exceeding fifteen days at any one time, if the State Government, having regard to a report made in that behalf by the Commissioner or, as the case may be, the Collector or otherwise, is of the opinion that it is expedient to do so.

- (4)During the period an area is an affected area,-
 - (a) the Authority shall perform or cause to be performed in such area functions related to—
 - (i) prevention of disaster or
 - (ii) (a) mitigation of effects of disaster,
 - (b) facilitating, coordinating and monitoring emergency relief, and
 - (c) monitoring and coordinating reconstruction and rehabilitation and,

or more newspapers

such other functions as are prescribed by or under this Act or as are supplemental, incidental or consequential to the aforesaid functions,

- (b) Where the affected area is spread over more than one the area, declare such area district, the Commissioner and where the affected area is restricted to a district, the Collector shall eferred to as "the affected perform such of the functions related to disaster management as are imposed on him by or under this Act,
 - (5)(a) Where the Commissioner or the Collector makes a report under sub-section (1), he shall commence performing the necessary functions imposed on him by or under this Act from the time he makes a report and
 - (b) he shall cease to perform the functions—
- (i) where an area is declared under clause (a) of sub-section (2) as the affected area for the period extend such period from specified under sub-section (3) on the expiry of such ono yna is avab asofiil g period, or time, if the State Covernm
- (ii) Where such period is extended from time to time under the proviso in the said sub-section (3) on the expiry of the period last extended or appending as at some as boarse set gains ((A)
- (iii)where an area is not so declared, on the receipt of a communication to that effect from the State Government under clause (b) of sub-section (2).
- (6) The Authority, the Commissioner, the Collector and all other agencies, shall cease to perform their functions in the affected area, on the expiry of the period referred to in sub-clause (i) or (ii) of clause (b) of sub-section (5).

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FINANCE, ACCOUNTS, AUDIT AND REPORTS

34. The Authority may, with the previous approval of the State

Government, borrow money in the open market or otherwise for the

prescribed, submit to the State Government for approved a budget in the prescribed form for the next financial year.

33. (1) The Authority shall have its own fund called the Disaster Management Fund and all receipts of the Authority shall be carried thereto and all payments by the Authority shall be made therefrom.

Fund of Authority

- (2) The Authority may accept grants, subventions, donations and gifts from the Central or State Government or a local authority or any individual or body, whether incorporated or not, for the purposes of this Act.
- (3) The moneys from the fund may be applied in payment of-
- (i) expenses incurred by the Authority in performing its functions under this Act,
 - (ii) remuneration to members,
 - (iii) salaries and allowances to officers and employees of the Authority,
 - (iv) expenses for such other purposes of the Act as may be prescribed.
- (4) (a) All moneys belonging to the fund of the Authority shall be deposited in such bank as the State Government may, by general or special order, direct.
- (b) Where the amount in the fund is not required to be applied immediately or at an early date for the purposes of this Act, it may be invested in any of the securities specified in clause (a), (b), (bb), (c) or (d) of section 20 of the Indian Trusts Act, 1882.

fanagement Fund and all receipts of the Authority shall be

(c) Any interest earned on such deposits and investments shall be credited to the fund.

Borrowing of money.

34. The Authority may, with the previous approval of the State Government, borrow money in the open market or otherwise for the purpose of carrying out its functions under this Act.

Budget.

- 35. (1) (a) The Authority shall, by such date in each year as may be prescribed, submit to the State Government for approval a budget in the prescribed form for the next financial year, showing the estimated receipts and expenditure, and the sums which would be required from the State Government during that financial year.
- (b) If any sum granted by the State Government remains wholly or partly unspent in any financial year, the unspent sum may be carried forward to the next financial year and taken into account in determining the sum to be provided by the State Government for that year.
 - (2) No sum shall be expended by or on behalf of the Authority unless the expenditure is covered by provision in the budget approved by the State Government.

Accounts and audit.

36. (1) The accounts of the Authority shall be prepared and maintained in such form and manner as may be prescribed.

(4) (a) All moneys belonging to the fund of the Authority shall be

(2) The Authority shall cause to be prepared for each financial year an annual statement of accounts in such form as may be prescribed.

(c) Any interest earned on such deposits and investments shall be credited to the fund.

Borrowing of money.

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Accounts and audit.

36. (1) The accounts of the Authority shall be prepared and maintained in such form and manner as may be prescribed.

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(2) The Authority shall cause to be prepared for each financial year an annual statement of accounts in such form as may be prescribed.

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- (3) The accounts of the Authority shall be audited by an auditor duly qualified to act as an auditor of companies under section 226 of the Companies Act, 1956.
- (4) The said auditor shall be appointed by the Authority.
- (5) Every auditor appointed to audit the accounts of the Authority under this Act shall have a right to demand the production of books of accounts, connected vouchers and other documents and papers, to inspect the offices of the Authority and to require such information from the Authority as he may think necessary for performance of his duty as an auditor.
- (6) The auditor shall send a copy of his report together with an audited copy of accounts to the Authority which shall, as soon as may be after the receipt of the audit report, forward the same to the State Government.
- (7) The State Government shall, as soon as may be after the receipt of the audit report under sub-section (6), cause the same to be laid before the State Legislature.
- 37. (1) The Authority shall, once in every year, prepare in such form and at such time of the year as may be prescribed,-

Annual report.

- (a) an annual report giving a full, true and fair account of its activities during the previous year and
- (b) programme of work likely to be undertaken by the authority in the next year,

and a copy of such report shall be forwarded to the State Government.

(2) The State Government shall, as soon as may be after the receipt of the annual report under sub-section (1), cause the same to be laid before the State Legislature.

CHAPTER XV

OFFENCES AND PENALTIES

Offences and penalties.

38. (1) Whoever -

- (a) without reasonable cause prevents or obstructs any officer of the State Government or of local authority or of the Authority or the Commissioner or the Collector from carrying out functions under this Act; or
- (b) without reasonable cause refuses to comply with the direction given by an officer of the State Government or the Authority or the Commissioner or the Collector while carrying out his functions under this Act; or
- (c) falsely predicts the occurrence of a disaster without any scientific basis and thereby creates panic in the community; or
- (d) makes a false claim for assistance for reconstruction or repair from any Officer of the State Government or Authority or the Commissioner or the Collector.

shall on conviction be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or both.

Cognizance of offences.

- 39. (1) No Magistrate shall take cognizance of an offence under section 38 except on a complaint in writing made by an Officer of the Authority generally or specially authorized in this behalf or the Commissioner or the Collector.
- (2) Notwithstanding anything contained in section 200 of the Code of Criminal Procedure 1973 it shall not be necessary in respect of the offence referred to in sub section (1) to examine the authorized officer of the Authority the Commissioner or the Collector when the complaint is presented in writing.

40. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence is committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purpose of this section -

- (a) "company" means a body corporate and includes a company as defined under the Companies Act, 1956, a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.

CHAPTER XVI

MISCELLANEOUS

Power of entry.

- 41. (1) The Chief Executive Officer, the Commissioner or the Collector, generally or specially authorized by the State Government in this behalf, may, at all reasonable times, enter upon any land and there do such things as may be reasonably necessary for the purpose of lawfully performing functions imposed upon them by or under this Act.
 - (2) Any officer or employee of the Authority, generally or specially authorised by it in this behalf, may, at all reasonable times, enter upon any land and there do such things as may be reasonably necessary for the purpose of lawfully carrying out any of the functions imposed upon him under this Act.

Delegation of functions.

- 42. (1) The Authority may, by a general or special order in writing, delegate to the Chief Executive Officer, the Commissioner, the Collector or any other officer such of its functions under this Act as may be specified in the order.
 - (2) The Authority may, by a general or special order in writing, form one or more committees consisting of its members and delegate to such committee such of the functions of the Authority as may be specified in the order.
 - (3) The Commissioner may, by an order in writing, delegate to any person such of the functions imposed on him by or under this Act as may be specified in the order.
 - (4) The Collector may, by an order in writing, delegate to the District Development Officer or any other person such of the functions imposed on him by or under this Act as may be specified in the order.

- (5) An order under sub-section (1), (3) or (4) may specify the conditions subject to which the functions specified therein may be performed.
- 43. (1) In the performance of its functions under this Act, the Authority shall be bound by such directions on questions of policy as the State Government may give in writing to it from time to time:

Power of State Government to issue directions to Authority.

Provided that the Authority shall be given an opportunity to express its views before any direction is given under this sub-section.

- (2) The decision of the State Government, whether a question is one of policy or not, shall be final.
- 44.(1) The Authority, The Commissioner or the Collector for the purpose of performing functions under this Act and for reasons to be recorded in writing issue an order directing a person to do or abstain from doing a specified thing within the affected areas in which the emergency relief measures are being undertaken.

Power to issue direction.

- (2) Any person on receipt of such order shall comply with the same.
- 45. Every member, the Chief Executive Officer, the Commissioner and every officer and employee of the Authority shall, when acting or purporting to act in pursuance of the provisions of this Act or of any rule or regulation made thereunder, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Members and employees to be public servants.

46. No suit, prosecution or other legal proceeding shall lie against the Authority or any member or officer or employee of the Authority or the Chief Executive Officer, the Commissioner or the Collector for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule or regulation or order made there-under.

Protection of action taken under the Act.

Power of State Government to make rules.

- 47. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
 - (2) In particular and without prejudice to the generality to the foregoing power, such rules may be made to provide for all or any of the following matters expressly required or allowed by this Act to be prescribed by rules.
 - (3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to the rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.
 - (4) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

Power of Authority to make regulations.

- 48. (1) The Authority may, with the previous approval of the State Government, by notification in the Official Gazette, make regulations not inconsistent with the Act and the rules made there-under, for enabling it to perform its functions under this
 - (2) In particular and without prejudice to the generality of the foregoing power, such regulations may be made to provide for all or any of the matters expressly required or allowed by this Act to be specified by regulations

Dissolution of society.

49. With effect on and from the date on which the Authority is established under sub-section (1) of section 6, the Gujarat State Disaster Management Authority, registered as a society under the Societies Registration Act, 1860 and functioning immediately before

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such date, shall, notwithstanding anything contained in that Act, stand dissolved (hereinafter in this section referred to as "the dissolved Authority") and upon such dissolution, the following consequences shall ensue, namely:--

- (i) all properties, movable and immovable, and assets vesting in the dissolved Authority shall stand transferred to and vest in the Authority so established (hereinafter in this section referred to as the "successor Authority".),
- (ii) all rights, liabilities and obligations of the dissolved Authority (including those arising under any agreement or contract) shall be deemed to be the rights, liabilities and obligations of the successor Authority,
- (iii) all sums due to the dissolved Authority shall be recoverable by the successor Authority, and for the purpose of such recovery, the successor Authority shall be competent to take such measures which were competent for the dissolved Authority to take subject to all limitations, conditions, rights or interests of any person subsisting immediately before the said date,
- (iv) all contracts made with and all instruments executed on behalf of the dissolved Authority shall be deemed to have been made with or by or on behalf of the successor Authority and shall have effect accordingly,
- (v) all proceedings and matters pending before the dissolved

 Authority or any officer of the dissolved Authority
 immediately before the said date shall be deemed to be

transferred to the successor Authority or to such officer as the successor Authority may direct,

- (vi) in all suits and legal proceedings pending on the said date in or to which the dissolved Authority was a party, the successor Authority shall be deemed to be substituted therefor,
- (vii) all officers and employees of the dissolved Authority shall be the officers and employees of the successor Authority,
- (viii) any reference to the dissolved Authority in any instrument shall, unless a different intention appears, be construed as a reference to the successor Authority.

Power to remove difficulties.

50. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of three years from the commencement of this Act.

(2) Every order made under sub- section (1) shall be laid, as soon as may be, after it is made, before the State Legislature.

Saving.

51. The Authority, its officers and employees, the Chief Executive Officers, the Commissioner and the Collector shall perform functions imposed by or under this Act in addition to and not in derogation of functions performed by the State Government or any of its officers in pursuance of the provisions of any law for the time

being in force or in exercise of the executive powers of the State for the prevention of occurrence of disasters, mitigation of effects of disasters, facilitating, coordinating and monitoring emergency relief and monitoring and coordinating measures for reconstruction and rehabilitation in the aftermath of the disasters in the State or in relation thereto.

STATEMENT OF OBJECTS AND REASONS

The Gujarat State is prone to natural disasters like earthquake, drought, flood and cyclone. Gujarat has a very long coast line of 1800 KMs and also most of the districts in Gujarat are in earthquake prone zones V, IV and III, thus making Gujarat highly vulnerable to earthquake and cyclone. Drought is a perennial problem in Gujarat. Additionally, due to its urbanization and heavy industrialization Gujarat is also prone to chemical and industrial hazards.

After the experience of earthquake on January 26, 2001, State Government has adopted a holistic approach to disaster management with a focus on reducing risk and vulnerability through policy, capacity building, education and communication to avoid or reduce impact of disasters and to achieve better preparedness. The State Government has already declared the Gujarat State Disaster Management Policy. It is necessary to have legislation clearly spelling out the Government's proactive, comprehensive and sustained approach to disaster management.

At present there exists a Relief Manual, which focuses on providing relief after occurrence of the event. It is necessary to enact legislation covering all the four areas of disaster management viz. prevention and mitigation, preparedness, emergency response and relief, and recovery. All over the world, the approach to disaster management is shifting from relief to mitigation and prevention and disaster preparedness with a view to reducing the vulnerability and to minimize loss of life and property.

The Government of India recognizing the need for a special Act addressing the entire gamut of disaster management had prepared a Model Act and had directed the States to undertake necessary legislation for disaster management. It is, therefore, necessary to have a special Act for disaster management with an objective to prepare the State for future natural and other disasters, to reduce the risk of future natural hazards and

vulnerability of its population and economy as well as to minimize loss of life and property.

The following notes on clauses explain, in brief, the important provisions of the Bill.

- Clause 2.- This clause defines certain terms used in the Bill.
- Clause 4.- This clause provides for the functions to be performed by the State Government for the purpose of managing a disaster and mitigating of its effect.
- Clause 5.- This clause provides for the functions of the Departments of the State Government.
- Clause 6.- This clause empowers the State Government to establish the Gujarat State Disaster Management Authority.
- Clause 7.- This clause provides for the constitution of the Authority.
- Clause 8.- This clause provides for the meetings of the Authority.
- Clause 10.- This clause provides for the appointment of the Chief Executive Officer and other officers and employees of the Authority.
- Clause 11.- This clause provides for the appointment of the State Relief Commissioner.
- Clause 12.- This clause provides for the functions to be performed by the Authority.
- Clause 13.- This clause empowers the Authority to collect the data on all aspects of disaster and disaster management.
- Clause 14.- This clause provides that Authority shall act as Repository of information and for that purpose establish an Institute.
- Clause 15.- This clause empowers the Authority to develop the guidelines for preparation of disaster management plans and strategies.
- Clause 16.- This clause empowers the Authority to promote awareness and preparedness to deal with the potential disasters.

Clause 20.- This clause provides for the duties to be performed and powers to be exercised by the Chief Executive Officer of the Authority.

Clauses 21

and 22. These clauses empower the Commissioner to issue directions to provide emergency relief in the affected areas and to perform the functions and exercise the powers provided therein.

Clauses 23

and 24. These clauses empower the Collector to issue directions to provide emergency relief in accordance with the disaster management plan and to do such other functions as provided therein.

- Clause 25.- This clause provides the functions to be performed by the Local Authority under the supervision of the Collector.
- Clause 26. This clause provides that each Department of Government in the district to prepare a disaster management plan.

Clauses 27

and 28. These clauses provide the duties of police force, grain rakshak dal, home guards, civil defence, fire services, community groups and youth organizations.

Clause 29.- This clause provides the duties of factories, private and public sector enterprises.

Clauses 30

and 31. These clauses provide for duties of the voluntary agencies and citizens.

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Clause 32.- This clause provides that the Commissioner for one or more districts and the Collector within his jurisdiction report the State Government for declaration of disaster affected areas and the State Government on the basis of such report, may declare any area to be the disaster prone area or disaster affected area for a period of fifteen days. It also empowers the State Government to extend such period.

- Clause 33.- This clause provides for establishment of disaster management fund.
- Clause 34.- This clause empowers the Authority to borrow the money in the open market for carrying out its functions under the Act.
- Clauses 35, 36 and 37. These clauses provide for budget of the Authority, accounts and audit and the preparation of annual report the Authority.
- Clause 38.- This clause provides for penalty for contravention of the act done by any person as specified therein.
- Clause 39.- This clause provides that no Magistrate shall take cognizance of offence except on a complaint by the officers of the Authority or the Commissioner or the Collector.
- Clause 41. This clause empowers the officers to enter upon any land and do such things for performing functions imposed under the Act.
- Clause 42. This clause provides for delegation of functions by the Authority, Commissioner and the Collector.
- Clause 43. This clause empowers the State Government to give a direction to the Authority on the question of policy.
- Clause 45. This clause provides that the members of the Authority and the officers and employees of the authority to be public servant.
- Clause 46.- This clause provides for usual indemnity for the act done in good faith.
- Clause 47.- This clause empowers the State Government to make rules for carrying out the purposes of this Act.
- Clause 48.- This clause empowers the Authority to make regulations to perform its functions under the Act.
- Clause 49.- This clause provide that the existing Gujarat State Disaster Management Authority registered as a Society shall stand

dissolved on establishment of Authority under sub-clause (1) of clause 3 and also provides the consequences thereof.

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- Clause 50.- This clause empowers the State Government to remove difficulty arises in giving effect of the provisions of the Act.
- Clause 51.- This clause provides that the Authority and officers shall perform the functions under the Act in addition to and not in derogation of functions performed under the provisions of any other law.

SAURABH PATEL

FINANCIAL MEMORANDUM

This Bill, if enacted and brought into force, would involve following expenditure from the Consolidated Fund of the State.

Clause 10 of the Bill provides for appointment of the Chief Executive Officer and other officers and employees of the Gujarat State Disaster Management Authority for performing the functions and duties conferred by or under the Act. This would involve annual expenditure to the extent of Rupees four crores, out of which Rupees three crores and sixty lakhs would be of recurring nature and Rupees forty lakhs would be of non-recurring nature.

SAURABH PATEL

MEMORANDUM REGADING DELEGATED LEGISLATION

This Bill involves delegation of legislative powers in the following respects, namely:-

- Clause 1.- Sub-clause (3) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.
- Clause 6.- (i) Sub-clause (1) of this clause empowers the State
 Government to establish by notification in the Official
 Gazette, an Authority by the name of the Gujarat State
 Disaster Management Authority with effect from such
 date as may be specified in the notification.
 - (ii) Sub-clause (3) of this clause empowers the State Government to specify by notification in the Official Gazette, the Head Quarter of the Authority.
- Clause 8.- Sub-clause (1) of this clause empowers the Authority to prescribe by regulation the place and the time of meeting and to observe such rules of procedure in regard to the transactions of business at its meeting.
- Clause 10.- (i) Sub-clause (1) of this clause empowers the Authority to prescribe by regulation the function to be performed by the Chief Executive Officer.
 - (ii) Sub-clause (3) of this clause empowers the State
 Government to prescribe by rules the salary and
 allowances payable to, and the conditions of services of,
 the Chief Executive Officer.

- (iii) Sub-clause (4) of this clause empowers the Authority to prescribe by regulation salaries and allowances payable to and the conditions of services of, the officers and employees of the Authority.
- Clause 20.- Clause (g) of this clause empowers the Authority to specify by regulation other powers and functions to be exercised and performed by the Chief Executive Officer.
- Clause 22.- Clause (h) of this clause empowers the authority to specify by regulation other powers and functions to be exercised and performed by the Commissioner.
- Clause 24.- Sub-clause (q) of this clause empowers the State Government to prescribe by rules, other powers and functions to be exercised and performed by the Collector.
- Clause 32.- (i) Para (a) of sub-clause (2) of this clause empowers the State Government to declare by notification in the <u>Official Gazette</u> the disaster prone area or disaster affected area.
 - (ii) Proviso to sub-clause (3) of this clause empowers the State Government to extend the period to continue the area to be an affected area.
- Clause 33.- Para (a) of sub-clause (4) of this clause empowers the State Government to direct by order, the money belonging to the fund of the authority to be deposited in a bank.
- Clause 36.- (i) Sub-clause (1) of this clause empowers the State

 Government to prescribe by rules the form in which and

the manner in which the accounts of the authority shall be prepared and maintained.

- (ii) Sub-clause (2) of this clause empowers the State Government to prescribe by rules the form in which the annual statement of accounts shall be prepared.
- Clause 37.- Sub-clause (1) of this clause empowers the State government to prescribe by rules the form in which and time within the annual report shall be prepared.
- Clause 47.- This clause empowers the State Government to make by notification in the Official Gazette, the rules generally for carrying out the purposes of the Act.
- Clause 48.- This clause empowers the authority to make by notification in the Official Gazette, the regulation generally for carrying out the purposes of the Act.
- Clause 50.- Sub-clause (1) of this clause empowers the State Government to make by order in the Official Gazette such provisions for removing any difficulty arising in giving effect to the provisions of the Act.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 27th March, 2003.

SAURABH PATEL.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 27th March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.





The Gujarat Government Gazette EXTRAORDINARY

PUBLISHED BY AUTHORITY

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THURSDAY, MARCH 27, 2003/CAITRA 6, 1925

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE BOMBAY PROHIBITION (GUJARAT AMENDMENT)
BILL, 2003.

GUJARAT BILL NO. 42 OF 2003.

A BILL

further to amend the Bombay Prohibition Act, 1949.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Bombay Prohibition (Gujarat Amendment) Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Insertion of new section 92 in Bom. XXV of 1949.

2. In the Bombay Prohibition Act, 1949 (hereinafter referred to as "the principal Act"), after section 91, the following section shall be inserted, namely:-

Bom. XXV of 1949.

Rendering community service in lieu of imprisonment.

- "92. (1) Where the court, on conviction for the first offence under clause (b) of sub-section (1) of section 66 for consumption of an intoxicant or sub-section (1) of section 85 or both sentences a person to simple imprisonment for certain term, it shall, in lieu of such imprisonment, require such person to execute a bond with sureties containing such conditions in such form as may be prescribed, for rendering such community service and subjecting himself to such medical treatment for getting freed from addiction of intoxicant as may be prescribed for the term of such imprisonment.
- (2) On execution of the bond under sub-section (1), the sentence shall stand suspended and the person shall be released:

Provided that if the person commits breach of any condition of the bond, the suspension of sentence shall stand cancelled and the sentence shall revive and the person shall be arrested by any police officer without warrant and remanded to undergo the unexpired portion of the sentence.

Explanation. - Nothing in this section shall be deemed as granting of probation to the offender.".

Amendment of section 143 of Bom. XXV of 1949.

3. In the principal Act, in section 143, in sub-section (2), after clause (uu), the following clause shall be inserted, namely:-

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(1) This Act may be called the Bombay Problemson (Outsing

"(uuu) prescribing the form of the bond, nature of the community service, and the terms and conditions subject to which such service shall be rendered and medical treatment to which person shall be subject under sub-section (1) of section 92;".

STATEMENT OF OBJECTS AND REASONS

With a view to prevent the consumption of an intoxicant and to achieve the prohibition in its real spirit, new section 92 is proposed to be inserted in the Bombay Prohibition Act, 1949 by which convict will have to execute the bond and will have to render such community service and also have to submit for such medical treatment for getting rid of addiction of intoxicant as may be prescribed.

The purpose of insertion of such provision in the Act is not only to restrict consumption and intoxicants but help the accused to be free from the addiction so that the policy of the State may be fulfilled in its proper perspective.

This Bill seeks to amend the said Act to achieve the aforesaid object.

AMIT SHAH

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves delegation of legislative powers in the following respects, namely:-

- Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.
- Clause 2.- Sub-section (1) of new section 92 proposed to be inserted by this clause empowers the State Government to prescribe by rules, the form in which a person shall execute a bond, nature of the community service and the terms and conditions for rendering community service.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 27th March, 2003.

AMIT SHAH.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 27th March, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.





The Gujarat Covernment Gazette EXTRAORDINARY

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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the Proviso to the rule 127 A of the Gujarat Legislative Assembly rules:-

THE GUJARAT UNIVERSITIES LAWS (AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 43 OF 2003.

A BILL

further to amend the Acts relating to certain Universities in the State.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

- 1. (1) This Act may be called the Gujarat Universities Laws Short title and commencement. (Amendment) Act, 2003.
- (2) It shall be deemed to have come into force on the 26th June, 2003.

Amendment of Acts relating to certain Universities in the State.

2. Each of the Acts specified in the second column of the Schedule shall be amended in the manner and to the extent specified against it in the third column thereof.

SCHEDULE

Sr.	Short title	Extent of Amendment.
1	2	3

1. The Gujarat University Act, 1949 (Bom. L of 1949).

> Eligibility of age limit for appointment, nomination, cooption in various authorities and on various offices.

- (1) After section 8, the following new section shall be inserted, namely:-
- "8A. (1) Notwithstanding anything contained in this Act, Statutes, Ordinances, Regulations and Rules, no person shall be appointed, nominated or, as the case may be, co-opted,-
 - (i) on the post of officers referred to in clauses (iv), (v), (v-a) and (vi) of section 8;
 - (ii) on the post of teacher; or
 - (iii) as a member of any of the authorities of the University, any committee or any other body thereof

after he attains the age of 62 years:

Provided that nothing in this section shall apply to the Chairman or a member of any of the authorities of the University, committee or any other body thereof, who holds the Chairmanship or membership by virtue of his office as a

Sr.	Short title	Extent of Amendment.
No.		
1	2	3

Chancellor, Vice-Chancellor or, as the case may be, the Pro-Vice-Chancellor.

- (2) Any person who has been appointed on the posts referred to in clauses (i) and (ii) of sub-section (1) or nominated or co-opted as a member of any of the authorities of the University, any committee or any other body thereof, shall cease to hold his office as such or, as the case may be, to be a member after attaining the age of 62 years."
- (2) In section 16, in subsection (1), under the heading "Class I Ex-Officio members", in paragraph (A), for clause (iii), the following shall be substituted, namely:-
- "(iii) The last Ex-Vice Chancellor of the University residing in the State,".

After section 8, the following

new section shall be inserted.

namely:-

The Maharaja
 Sayajirao
 University of
 Baroda Act, 1949
 (Baroda Act XVII of 1949).

Eligibility of "8 age limit for appointment, nomination, cooption in various peauthorities and no

various

offices.

"8A. (1) Notwithstanding anything contained in this Act, Statutes, Ordinances, Regulations and Rules, no person shall be appointed, nominated or, as the case may be, co-opted,-

(i) on the post of officers referred to in clauses (v), (vi) and (vii) of section 8;

Sr.	Short title	Extent of Amendment.
No.		
1	2	3

- (ii) on the post of teacher; or
- (iii) as a member of any of the authorities of the University, any committee or any other body thereof

after he attains the age of 62 years:

Provided that nothing in this section shall apply to the Chairman or a member of any of the authorities of the University, committee or any other body thereof, who holds the Chairmanship or membership by virtue of his office as a Visitor, Chancellor, Vice-Chancellor or, as the case may be, the Pro-Vice-Chancellor.

- (2) Any person who has been appointed on the posts referred to in clauses (i) and (ii) of sub-section (1) or nominated or co-opted as a member of any of the authorities of the University, any committee or any other body thereof, shall cease to hold his office as such or, as the case may be, to be a member after attaining the age of 62 years."
- (1) After section 8, the following new section shall be inserted, namely:-
- "8A. (1) Notwithstanding anything contained in this Act, Statutes, Ordinances, Regulations and Rules, no person shall be appointed, nominated or, as the case may be, co-opted,-
- 3. The Sardar Patel
 University Act,
 1955
 (Bom. XL of 1955).

Eligibility of age limit for appointment, nomination, cooption in various authorities and on various offices. PART V]

28

Sr.	Short title	Extent of Amendment.
No.		
1	2	3

- (i) on the post of officers referred to in clauses (iii), (iv) and (v) of section 8;
- (ii) on the post of teacher; or
- (iii) as a member of any of the authorities of the University, any committee or any other body thereof

after he attains the age of 62 years:

Provided that nothing in this section shall apply to the Chairman or a member of any of the authorities of the University, committee or any other body thereof, who holds the Chairmanship or membership by virtue of his office as a Chancellor, Vice-Chancellor or, as the case may be, the Pro-Vice-Chancellor.

- (2) Any person who has been appointed on the posts referred to in clauses (i) and (ii) of sub-section (1) or nominated or co-opted as a member of any of the authorities of the University, any committee or any other body thereof, shall cease to hold his office as such or, as the case may be, to be a member after attaining the age of 62 years."
- (2) In section 15, under the heading "I Ex-Officio fellows",

Sr.	Short title	Extent of Amendment.
No.	<u> </u>	* · · · · · · · · · · · · · · · · · · ·
1	2	3

in paragraph (A), for clause (iii), the following shall be substituted, namely:-

- "(iii) The last Ex-Vice-Chancellor of the University residing in the State,".
- (1) After section 8, the following new section shall be inserted, namely:-
- "8A. (1) Notwithstanding anything contained in this Act, Statutes, Ordinances, Regulations and Rules, no person shall be appointed, nominated or, as the case may be, co-opted,-
 - (i) on the post of officers referred to in clauses (iv), (v), (vi) and (vii) of section 8;
 - (ii) on the post of teacher; or
 - (iii) as a member of any of the authorities of the University, any committee or any other body thereof

after he attains the age of 62 years:

Provided that nothing in this section shall apply to the Chairman or a member of any of the authorities of the University, committee or any other body thereof, who holds the Chairmanship or membership by virtue of his office as a Chancellor, Vice-Chancellor or, as the case may be, the Pro-Vice-Chancellor.

(2) Any person who has been appointed on the posts referred to in clauses (i) and (ii)

4. The South Gujarat University Act, 1965 (Guj. 38 of 1965).

Eligibility of age limit for appointment, nomination, co-option in various authorities and on various offices.

Sr.	Short title	Extent of Amendment.
No.		
1	2	3

5. The Saurashtra
University Act,
1965

(Guj. 39 of 1965).

Eligibility of age limit for appointment, nomination, cooption in various authorities and on various offices. of sub-section (1) or nominated or co-opted as a member of any of the authorities of the University, any committee or any other body thereof, shall cease to hold his office as such or, as the case may be, to be a member after attaining the age of 62 years."

- (2) In section 16, in subsection (1), under the heading "Class I Ex-Officio Members", in paragraph (A), for clause (iii), the following shall be substituted, namely:-
- "(iii) The last Ex-Vice-Chancellor of the University residing in the State,".
- (1) After section 8, the following new section shall be inserted, namely:-
- "8A. (1) Notwithstanding anything contained in this Act, Statutes, Ordinances, Regulations and Rules, no person shall be appointed, nominated or, as the case may be, co-opted,-
 - (i) on the post of officers referred to in clauses (iv), (v), (vi) and (vii) of section 8;
 - (ii) on the post of teacher; or
 - (iii) as a member of any of the authorities of the University, any committee or any other body thereof

after he attains the age of 62 years:

Provided that nothing in this section shall apply to the

Sr.	- Short title	Extent of Amendment.
No.	Mility 1997	14 A
1	2	3

Chairman or a member of any of the authorities of the University, committee or any other body thereof, who holds the Chairmanship or membership by virtue of his office as a Chancellor, Vice-Chancellor or, as the case may be, the Pro-Vice-Chancellor.

- (2) Any person who has been appointed on the posts referred to in clauses (i) and (ii) of sub-section (1) or nominated or co-opted as a member of any of the authorities of the University, any committee or any other body thereof, shall cease to hold his office as such or, as the case may be, to be a member after attaining the age of 62 years."
- (2) In section 16, in subsection (1), under the heading "Class I Ex-officio members", in paragraph (A), for clause (iii), the following shall be substituted, namely:-
- "(iii) The last Ex-Vice-Chancellor of the University residing in the State,".
- (1) After section 8, the following new section shall be inserted, namely:-

6. The Bhavnagar University Act, 1978 (Guj. 26 of 1978).

Eligibility of age limit for appointment, nomination, co-option in various authorities and on various offices.

"8A. (1) Notwithstanding anything contained in this Act, Statutes, Ordinances, Regulations and Rules, no person shall be appointed, nominated or, as the case may be, co-opted,-

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Sr.	Short title	Extent of Amendment.
No.		
1	2	3

- (i) on the post of officers referred to in clauses (iii), (iv) and (v) of section 8;
- (ii) on the post of teacher; or
- (iii) as a member of any of the authorities of the University, any committee or any other body thereof

after he attains the age of 62 years:

Provided that nothing in this section shall apply to the Chairman or a member of any of the authorities of the University, committee or any other body thereof, who holds the Chairmanship or membership by virtue of his office as a Chancellor, Vice-Chancellor or, as the case may be, the Pro-Vice-Chancellor.

- (2) Any person who has been appointed on the posts referred to in clauses (i) and (ii) of sub-section (1) or nominated or co-opted as a member of any of the authorities of the University, any committee or any other body thereof, shall cease to hold his office as such or, as the case may be, to be a member after attaining the age of 62 years."
- (2) In section 15, in subsection (1), under the heading "CLASS-I EX-OFFICIO MEMBERS",

Sr.	Short title	Extent of Amendment.
No.	· .	
1	2	3

in paragraph (A), for clause (iii), the following shall be substituted, namely:-

The last Ex-Vice-

"(iii)

- Chancellor of the University residing in the State,".
 - (1) After section 8, the following new section shall be inserted, namely:-
 - "8A. (1) Notwithstanding anything contained in this Act, Statutes, Ordinances, Regulations and Rules, no person shall be appointed, nominated or, as the case may be, co-opted,-
 - (i) on the post of officers referred to in clauses (iv),(v), (vi) and (vii) of section
 - (ii) on the post of teacher; or
 - (iii) as a member of any of the authorities of the University, any committee or any other body thereof

after he attains the age of 62 years:

Provided that nothing in this section shall apply to the Chairman or a member of any of the authorities of the University, committee or any other body thereof, who holds the Chairmanship or membership by virtue of his office as a Chancellor, Vice-Chancellor or, as the case may be, the Pro-Vice-Chancellor.

7. The
Hemchandracharya
North Gujarat
University Act,
1986
(Guj. 22 of 1986).

Eligibility of age limit for appointment, nomination, cooption in various authorities and on various offices.

Sr. No.	Short title	Extent of Amendment.
1	2	3

- (2) Any person who has been appointed on the posts referred to in clauses (i) and (ii) of sub-section (1) or nominated or co-opted as a member of any of the authorities of the University, any committee or any other body thereof, shall cease to hold his office as such or, as the case may be, to be a member after attaining the age of 62 years."
- (2) In section 16, in subsection (1), under the heading "Class I Ex-Officio Members", in paragraph (A), for clause (iii), the following shall be substituted, namely:-
- "(iii) The last Ex-Vice-Chancellor of the University residing in the State,".

Guj. Ord. 2 of 2003. 3. (1) The Gujarat Universities Laws (Amendment) Ordinance, 2003 is hereby repealed.

Repeal and Savings.

(2) Notwithstanding such repeal, anything done or any action taken under the Acts specified in the second column of the Schedule as amended by the said Ordinance, shall be deemed to have been done or taken under the said Acts, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

In fulfillment of the Constitutional responsibility for maintenance of standards in higher education, the Central Government and the University Grants Commission have taken from time to time several measures relating to the revision of pay-scales, minimum qualification for appointment of college and University teachers in order to attract and retain talent in the teaching profession.

- 2. As per directions of the University Grants Commission in this regard, the age limit of superannuation of a college and University teacher has been fixed at 62 years and the University Grants Commission has also directed that no retired teacher be appointed on any statutory or even non-statutory position in colleges and University. This view also holds good for the members who are nominated, appointed or co-opted on various authorities, court, council, committee, board or body etc.
- 3. Most of the Vice-Chancellors also hold strong view that no person who is more than 62 years of age be considered eligible to hold any office or post or membership in any University authority court, council, board, committee or body etc. which effectively close the doors to fresh talent from contributing to the functioning of the University.
- 4. Since no University Act provides that no person who has attained the age of 62 years shall be eligible for being appointed, nominated or co-opted, or continue on various statutory and non-statutory bodies, it was considered necessary to amend the certain University Acts so as to bring them in conformity with the directions of University Grants Commission and to have talented young persons on various offices and posts.

As the Gujarat Legislative Assembly was not in session, the Gujarat Universities Laws (Amendment) Ordinance, 2003 was promulgated to amend certain Acts relating to Universities in the State to achieve the aforesaid object. This Bill seeks to replace the said Ordinance by an Act of the State Legislature.

Dated the 1st September, 2003.

ANANDIBEN PATEL.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Gandhinagar, Dated the 2nd September, 2003. Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.





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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the Proviso to the rule 127 A of the Gujarat Legislative Assembly rules:

THE GUJARAT LOKAYUKTA (AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 44 OF 2003.

A BILL

further to amend the Gujarat Lokayukta Act, 1986.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. This Act may be called the Gujarat Lokayukta (Amendment) Act, 2003.

Short title.

Guj. 31 of 1986.

2. In the Gujarat Lokayukta Act, 1986 (hereinafter referred to as "the principal Act"), in section 2, in clause (7), -

Amendment of section 2 of Guj. 31 of 1986.

 in sub-clause (b), after the words "the Vice-Chairman" occurring at two places, the words "or a non-official director or a non-official member" shall be inserted;

- (ii) for sub-clause (c), the following shall be substituted, namely:-
 - "(c) the Chairman or the Vice-Chairman or a non-official director or a non-official member of a Corporation or Board established by or under the Bombay Act or the Gujarat Act or by the State Government and owned or controlled by the State Government;".

Amendment of section 24 of Guj. 31 of 1986.

3. In the principal Act, in section 24, for the words and figures "the Prevention of Corruption Act, 1947", the words and figures "the Prevention of Corruption Act, 1988" shall be substituted.

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Bills introduced in the Gujarat Legislative Assembly

may be filed as a Separase Compiletion.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

the Proviso to the rule 127 A of the Gujarat Legislative Assembly rules -

THE GUJARAT LOKAYLETA (AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 44 OF 2003.

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It is hereby enacted in the Piffy-fourth Year of the Republic of

This Act may be called the Gujarat Lokayukta (Amendment)

 In the Gujerat Lokayukta Act, 1986 (horoinafter referred to as Amendment of the principal Act¹³), an section 2, in clause (1),

in sub-clause (b), after the words "the Vice-Chairman" occurring at two places, the words "or a non-official director

or a non-official member" shall be inserted;

STATEMENT OF OBJECTS AND REASONS

The following two amendments are proposed to be carried out in the Gujarat Lokayukta Act, 1986:-

- (a) "One amendment is to replace the words and figures "Prevention of Corruption Act, 1947" appearing in section 24 of the Act, by the words and figures "Prevention of Corruption Act, 1988".
- (b) The other amendment is to expand the definition of "public functionary" in so far is the Government Companies, Government Corporation vic. are concerned.
- 2. At present, the Lokayukta is empowered to investigate the allegations made against a "public functionary" as defined in clause (7) of section 2 of the Gujarat Lokayukta Act, 1986. The Chairman or the Vice-Chairman of a Government Company within the meaning of section 617 of the Companies Act, 1956 in which not less than 51% of its paid up share capital is held by the State Government, or which is subsidiary of a Company in which not less than 51% of its paid up share capital is held by the State Government, are included in the definition of the term "public functionary", but a non-official director or a non-official member of such Company are not included in the definition of term "public functionary" in sub-clause (b) of clause (7) of section 2 of the said Act.
- 3. Similarly, the Chairman, Vice-Chairman, a non-official director or a non-official member of a Board or Corporation established by or under the Bombay Act or Gujarat Act or by the State Government and owned or controlled by the State Government, are not included in the definition of the term "public functionary" in sub-clause (c) of clause (7) of section 2 of the said Act.
- 4. In order to provide an effective mechanism to look into the complaints or allegations against this category of persons, the Government considers it necessary to bring them within the purview of the Lokayukta for the purpose of investigation of such complaints or allegations against them. It is, therefore, proposed to amend section 2 of the Gujarat Lokayukta Act, 1986.
- 5. Under the existing provisions of the Gujarat Lokayukta Act, 1986, in section 24 of the Act, the words and figures "the Prevention of Corruption Act, 1947" are appearing. The Prevention of Corruption Act, 1947 has already been replaced by "the Prevention of Corruption Act, 1988". In order to indicate the proper and correct name of the Act, in the Gujarat Lokayukta Act, 1986, it is considered necessary to make

amendment in section 24 of the Act. It is, therefore, proposed to amend the said section 24 of the Gujarat Lokayukta Act, 1986 accordingly.

6. This Bill seeks to achieve the aforesaid object.

Dated the 27th August, 2003.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Gandhinagar,

Dated the 2nd September, 2003. Secretary to the Government of Gujarat,

Legislative and Parliamentary Affairs Department. <mark>राज्या के पार्टी के प्रमाण के किल्</mark>टी के प्रशास के किल्हा के किल्हा है। The second of the second of

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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the Proviso to the rule 127 A of the Gujarat Legislative Assembly rules:-

THE GUJARAT AYURVED UNIVERSITY (AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 45 OF 2003.

A BILL

further to amend the Gujarat Ayurved University Act, 1965.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:--

1. (1) This Act may be called the Gujarat Ayurved University (Amendment) Act, 2003.

Short title and commencement.

- (2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.
- Guj. 40 of 1965. 2. In the Gujarat Ayurved University Act, 1965 (hereinafter referred to as "the principal Act"), in section 2,--

Amendment of section 2 of Guj. 40 of 1965.

(1) after clause (6), the following clause shall be inserted, namely:--

- "(6A) "Department of Board of Post-Graduate Teaching and Research" means any post-graduate or research institution or department maintained by the Board;";
- (2) for clause (12), the following clause shall be substituted, namely:--
 - "(12) "Statutes", "Ordinances", "Regulations" and "Rules" mean respectively the Statutes, Ordinances, Regulations and Rules made under this Act and for the time being in force;";
- (3) for clause (18), the following clause shall be substituted, namely:--
 - "(18) "University department" means any institution or department maintained as such by the University other than the Department of Board of Post-Graduate Teaching and Research."

Amendment of section 3 of Guj. 40 of 1965.

3. In the principal Act, in section 3, in sub-section (1), for the words "the Senate and the Syndicate of the University", the words "the Senate, the Syndicate and the Department of Board of Post-Graduate Teaching and Research of the University" shall be substituted.

Amendment of section 4 of Guj. 40 of 1965.

- In the principal Act, in section 4,
 - (1) in clause (10), —
 - (a) in sub-clause (a), for the words "Statutes, Ordinances and Rules", the words "Statutes, Ordinances, Regulations and Rules" shall be substituted;
 - (b) in sub-clause (b), for the words "Ordinances or Rules", the words "Ordinances, Regulations or Rules" shall be substituted:
 - (2) in clause (12), for the words "Statutes, Ordinances and Rules", the words "Statutes, Ordinances, Regulations and Rules" shall be substituted.

Amendment of 5. In the principal Act, in section 8, after item (iii), the following item section 8 of Guj. shall be inserted, namely:-40 of 1965.

"(iiia) The Director of the Department of Board of Post-Graduate
Teaching and Research;"

Amendment of section 10 of Guj.40 of 1965.

- . In the principal Act, in section 10,--
 - (1) for sub-section (1), the following shall be substituted, namely:-

"(1) The Vice-Chancellor shall be appointed by the State Government from amongst three persons recommended under sub-section (1B) by a committee appointed for the purpose under sub-section (1A).";

(2) after sub-section (1), the following sub-sections shall be inserted, namely:--

"(IA) (a) For the purpose of sub-section (1), the Chancellor shall appoint a Committee which shall consist of the following

members, namely:--

- two members (not being persons connected with the University or with any affiliated college, recognised institution or approved institution), out of whom one shall be a person nominated in the manner prescribed by the Statutes by the Syndicate and the other shall be a person nominated in the manner prescribed by the Statutes by the Vice-Chancellors of all the Universities established by law in the State of Gujarat;
- one member to be nominated by the Chancellor: (ii)

Provided that in any case where for any reason whatsoever a person is not nominated under sub-clause (i) by the Syndicate or by the Vice-Chancellors, it shall be lawful for the Chancellor to nominate a person to be a member of the Committee in any such case.

- (b) The Chancellor shall appoint one of the three members of the Committee as the Chairman.
- (1B) The Committee so appointed shall, within such time and in such manner as may be prescribed by Statutes, select three persons whom it considers fit for being appointed as Vice-Chancellor and shall recommend to the Chancellor the names of the persons so selected arranged in an alphabetical order together with such other particulars as may be prescribed by the Statutes.";
- in sub-section (3), for the words "shall be such as may be prescribed by the Statutes", the words "shall be such as may be determined by the State Government" shall be substituted.
- In the principal Act, in section 11,-7.

Amendment of section 11 of (1) in sub-section (1), after the words "of the Syndicate", the words Guj. 40 of "of the Board of Post-Graduate Teaching and Research," shall 1965. be inserted:

- (2) in sub-section (3), for the words "the Statutes, Ordinances and rules", the words "the Statutes, Ordinances, Regulations and Rules" shall be substituted;
- (3) in sub-section (5), for the words "the Statutes and Ordinances", the words "the Statutes, Ordinances and Regulations" shall be substituted;
- (4) after sub-section (5), the following sub-section shall be inserted, namely:--
 - "(5A) (a) Subject to the provisions contained in sub-section (4) and notwithstanding anything contained in sub-section (5) where the Vice-Chancellor after making such inquiry as he deems fit is of the opinion that the execution of any order or resolution of an authority specified in or declared under section 14, or the doing of anything which is about to be done or is being done by or on behalf of the University—
 - (i) is inconsistent with the provisions of this Act or of any Statute, Ordinance, Regulation or Rule, or
 - (ii) is not in the interest of the University, or
 - (iii) is likely to lead to breach of peace,

he may forward a copy of the order or resolution or, as the case may be, refer the doing of the thing, with a statement of reasons, to the authority which made the order or passed the resolution or proposes to do the thing for reconsideration by that authority as to whether the said order or resolution may not be rescinded, or revised or modified in the manner stated by him, or the doing of the thing be refrained from.

- (b) Where the authority after consideration revises or modifies the order or the resolution in the manner stated by the Vice-Chancellor, then notwithstanding anything contained in clause (e) such revised or modified order or resolution shall revive from the date of such revision or modification.
- (c) Where the authority revises or modifies the order or resolution in such manner as is inconsistent with the manner stated by the Vice-Chancellor, the Vice-Chancellor shall refer the matter to the State Government for its decision.
- (d) The State Government may, on such reference being made, revise or modify the order or resolution or direct that the order or resolution shall continue to be in force with or without modification permanently or for such period as it may specify:

Provided that the order or resolution shall not be revised or modified or continued by the State Government without giving the concerned authority a reasonable opportunity of showing the cause against the order or the resolution.

- (e) The order, resolution or, as the case may be, the doing of thing, shall remain in abeyance from the date of the action of the Vice-Chancellor of forwarding the copy of order or resolution or of making reference under clause (a) till the date of the order of the State Government under clause (d).";
- (5) in sub-section (6), for the words "Statutes and Ordinances", the words "Statutes, Ordinances and Regulations" substituted.
- In the principal Act, in section 12, after the words "the Secretary of the Syndicate", the words "and of the Board of Post-Graduate Teaching and Research" shall be added.

Amendment of section 12 of Gui. 40 of 1965.

In the principal Act, after section 12, the following section shall be inserted, namely:--

12A. The Director of the Board of Post-Graduate

Insertion of new section 12A in Guj. 40 of 1965.

"Director of the Board of Post-Graduate Teaching and Research.

Teaching and Research shall be a whole time salaried officer. He shall be appointed by the Board of Post-Graduate Teaching and Research in accordance with the Regulations and his emoluments and conditions of service shall be determined by such Regulations. He shall exercise such powers and perform such duties as may be prescribed by the Statutes and Regulations.".

10. In the principal Act, in section 14, after clause (ii), the following clause shall be inserted, namely:-

"(iia) The Board of Post-Graduate Teaching and Research.".

Amendment of section 14 of Guj. 40 of 1965.

11. In the principal Act, in section 15, in sub-section (1), --

Amendment of section 15 of . Gui. 40 of 1965.

- (1) under the heading "Class-I Ex-Officio Members",--
- (a) in paragraph (A), after item (iii), the following item shall be inserted, namely:--
 - "(iiia) The Director of the Board of Post-Graduate Teaching and Research,";
- (b) in paragraph (B), after item (iii), the following item shall be added, namely:--

"(iv) The Adviser, Ayurved, Ministry of Health and Family Welfare, Government of India.";

- (2) under the heading "Class-II Ordinary Members",--
 - (a) in paragraph (A),--
 - (i) in item (i), for the word "five", the word "four" shall be substituted;
 - (ii) after item (i), the following item shall be inserted, namely:--

"(ia) One member to be elected by teachers of the Board of Post-Graduate Teaching and Research, excluding the Dean and Heads of Departments, from amongst themselves in the manner prescribed by the Statutes";

- (b) in paragraph (B),--
 - (i) for item (ii), the following item shall be substituted, namely:--
 - "(ii) two shall be the persons recommended by the Ministry of Health and Family Welfare, Department of Indian System of Medicine and Homoeopathy, Government of India.".

Amendment 12. of section 18 of Guj. 40 of 1965.

In the principal Act, in section 18, —

- (1) in sub-section (1),--
 - (a) after the words "the acts of the Syndicate", the words "and of the Board of Post-Graduate Teaching and Research" shall be inserted;
 - (b) for the words "the Statutes and the Ordinances", the words "the Statutes, Ordinances and Regulations" shall be substituted;
- (2) in sub-section (2), --
 - (a) in sub-clause (vii), for the words "the Ordinance", the words "the Ordinance or the Regulation" shall be substituted;
 - (b) in clause (xi), for the words "the Statutes and Ordinances", the words "the Statutes, Ordinances and Regulations" shall be substituted.

13. In the principal Act, in section 19, in sub-section (1), --

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Amendment of section 19 of Guj. 40 of 1965.

- (1) for clause (iia), the following clauses shall be substituted, 1965.
 - "(iia) the Adviser, Ayurved, Department of Indian System of Medicine and Homoeopathy, Ministry of Health and Family Welfare of the Government of India or an officer of that Department nominated by him,
 - (iib) the Director of the Board of Post-Graduate Teaching and Research,";
- (2) after clause (iv), the following clause shall be inserted, namely, --
 - "(iva) one member who is a teacher of the Board of Post-Graduate Teaching and Research, elected to the Senate under section 15(1) Class II Ordinary Members A(ia),";
 - (3) in clause (vi), for the words "three members", the words "two members" shall be substituted.
- 14. In the principal Act, in section 20, in sub-section (1),—

Amendment of section 20 of Guj. 40 of 1965.

- (1) in clause (iv), the following shall be added at the end, namely:--
 - "other than the fund in the form of grant given by the Government of India for the purpose of Post-Graduate Teaching and Research",
- (2) in clause (xii), after the words "museums and hostels", the words "other than those of the Board of Post-Graduate Teaching and Research" shall be inserted;
- (3) in clause (xiv), after the words "recognised institution and hostels", the words "not being recognised institution and hostels of the Board of Post-Graduate Teaching and Research" shall be inserted;
- (4) in clause (xvi), after the words "of the University", the words "other than those of the Board of Post-Graduate Teaching and Research" shall be inserted;
- (5) in clause (xx), for the words and brackets "the officers (other than the Chancellor and the Vice-Chancellor), teachers and servants of the University", the words and brackets "the officers (other than the Chancellor, Vice-Chancellor and the Director of

the Board of Post-Graduate Teaching and Research), teachers and servants of the University other than those of the said Board" shall be substituted;

- (6) in clause (xxi), after the words "recognised institution", the words "not being recognised institution of the Board of Post-Graduate Teaching and Research" shall be inserted;
- (7) in clause (xxii), the words "other than those of the Board of Post-Graduate Teaching and Research" shall be added at the end;
- (8) in clause (xxiii), the words "not being recognised institutions of the Board of the Post-Graduate Teaching and Research" shall be added at the end;
- (9) in clause (xxiv), the words "other than those of the Board of the Post-Graduate Teaching and Research" shall be added at the end;
- (10) in clause (xxvii), for the words "the University examinations and other tests", the words "all examinations and other tests held by the University other than those held by the Board of the Post-Graduate Teaching and Research" shall be substituted.

Insertion of new sections 20A and 20B in Guj.40 of 1965.

15. In the principal Act, after section 20, the following sections shall be inserted, namely: --

"Board of Post-Graduate Teaching and Research. 20A. (1) The Board of Post-Graduate Teaching and Research shall consist of the following members, namely: --

- (i) the Vice-Chancellor,
- (ii) three members to be nominated by the Department of Indian System of Medicine and Homoeopathy, Ministry of Health and Family Welfare, Government of India,
- (iii) four members to be nominated by the State Government.
- (iv) one member to be nominated by the Syndicate from amongst its members who are the teachers of the Board of Post-Graduate Teaching and Research,
- (v) one member to be nominated by the Syndicate from amongst its members who are the teachers possessing post-graduate qualifications,

- (vi) the Director of the Board of Post-Graduate Teaching and Research,
- (vii) the Dean of Post-Graduate Teaching and Research,
- (viii) the Registrar
- (2) The term of the members of the Board of Post-Graduate Teaching and Research shall be three years.
 - 20B. Subject to such conditions as may be prescribed by or Powers and under the provisions of this Act, the Board of Post-Graduate Teaching and Research shall exercise the following powers and perform the following duties, namely, -
 - to manage the Institute of Post-Graduate (i) Teaching and Research Departments, institutes of research or specialised studies and laboratories and hostels of Post-Graduate Teaching and Research,
 - (ii) subject to the supervision of the Senate, to administer the fund in the form of grant given by the Government of India for the purpose of Post-Graduate teaching and research,
 - (iii) to supervise and control the admission, conduct and discipline of the students of post-graduate studies and to supervise and control their residence and to make arrangements for promoting their health and general welfare,
 - to appoint Heads of the Departments of Post-(iv) Graduate Teaching and Research,
 - save as otherwise provided by this Act or the (v) Statutes, to appoint on the recommendation of a committee of selection, if any, as required by this Act or Statutes, teachers for post-graduate teaching, visiting professors, employees of paramedical services, and technical staff of the laboratories managed by the Board, to define their duties and conditions of service and to provide for the filling up of temporary vacancies in their posts,
 - to recognize a member of the staff of recognised (vi) institution as a teacher and to withdraw such recognition.
 - to lay down courses of post-graduate studies, (vii)
 - to arrange for co-ordination of studies and (viii) teaching in the Institute of the Post-Graduate Teaching and Research and in recognized institutions.
 - to hold and conduct post-graduate examinations, (ix)

duties of **Board of Post-**Graduate Teaching and Research.

- (x) to lay down conditions on which students shall be admitted to post-graduate examinations,
- (xi) to grant exemption to students from approved courses of studies in the recognised institutions for qualifying for post-graduate degrees, post-graduate diplomas and other academic distinctions,
- (xii) to appoint examiners, to fix their remuneration and to arrange for the conduct of and for publishing the results of post-graduate examinations and tests,

(xiii) to make, amend and cancel Regulations,

- (xiv) to exercise such other powers and perform such other duties as may be conferred or imposed on it by or under this Act,
- (xv) to delegate such of its powers to the Director of Board of Post-Graduate Teaching and Research, the Dean or a Committee appointed by it as it may deem fit."

Amendment 16. of section 25 of Guj. 40 of 1965.

In the principal Act, in section 25, --

- (1) in sub-sections (2) and (3), after the word "Syndicate", the words "or the Board of Post-Graduate Teaching and Research" shall be inserted;
- (2) in sub-section (4), after the words "the Syndicate" wherever they occur "or, as the case may be, the Board of Post-Graduate Teaching and Research" shall be inserted";
- (3) in sub-section (5), after the words "the Syndicate", wherever they occur, the words "or the Board of Post-Graduate Teaching and Research" shall be inserted.

Amendment of 17. section 26 of Guj. 40 of 1965.

In the principal Act, in section 26, in sub-section (1), —

- (1) in clause (k), after the words "of the University", the words "other than those of the Board of Post-Graduate Teaching and Research" shall be added,
- (2) in clauses (m), (o) and (p), after the words "recognised institutions", the words "not being recognised institutions of the Board of Post-Graduate Teaching and Research" shall be inserted.

Insertion of new sections 26A and 26B in Guj. 40 of 1965. 18. In the principal Act, after section 26, the following sections shall be inserted, namely: --

"Regulations, their making and scope. 26A.(1) Subject to the provisions of this Act and the Statutes, the Board of Post-Graduate Teaching and Research may frame Regulations to provide for all or any of the following matters, namely, --

- (a) the admission of students to post-graduate study and research;
- (b) the courses of study to be laid down for all postgraduate degrees, diplomas and certificates;
- (c) the conditions under which students shall be admitted to the courses of post-graduate studies for post-graduate degrees, diplomas and other academic distinctions and to the examinations of the Board of Post-Graduate Teaching and Research;
- (d) the recognition and inspection of hostels of the Board of Post-Graduate Teaching and Research;
- (e) the conduct and discipline of post-graduate students and conditions of their residence;
- (f) the number, qualifications and conditions of appointment of the post-graduate teachers;
- (g) the fees to be charged for courses of instruction in or by or on behalf of the University given by postgraduate teachers, for tutorial and supplementary instruction given by or on behalf of the Board of Post-Graduate Teaching and Research, upon admission into the University and for continuance therein, for admission to the examinations, degrees and diplomas of post-graduate studies and for other purposes of like nature;
- (h) the conditions of appointment and the duties of examiners for post-graduate examinations;
- (i) the conduct of post-graduate examinations;
- (j) the duties and powers of the Board of University Teaching, the Scientific Advisory Committee and Committees appointed by the Board of Post-Graduate Teaching and Research;
- (k) the powers and duties of the Director of Board of Post-Graduate Teaching and Research, Heads of Departments, employees of para-medical services and technical staff of laboratories maintained by the Board of Post-Graduate Teaching and Research;
- (l) the discipline to be enforced in regard to the postgraduate students in so far as they come within the jurisdiction of the University for purposes of postgraduate study and examinations;
- (m) the rules to be observed and enforced by recognised institutions in respect of transfer of students;
- (n) the registers of students to be kept by the Board of Post-Graduate Teaching and Research and recognised institutions;

- (o) the fees (if any) to be paid for entry or retention of a name on any register kept by the Board of Post-Graduate Teaching and Research or recognised institutions;
- (p) the inspection of recognised institutions and the reports, returns and other information to be furnished by such recognised institutions;
- (q) the duties of post-graduate teachers;
- (r) generally, all matters which by this Act or by the Statutes may be provided for by the Regulations and all matters for which provision is, in the opinion of the Board of Post-Graduate Teaching and Research, necessary for the exercise of the powers conferred, or the performance of the duties imposed on the Board by this Act or the Statutes.
- (2) All Regulations made by the Board of Post-Graduate Teaching and Research shall, except as otherwise provided by this Act, have effect from such date as it may direct; but every Regulation so made shall be laid on the table of the Senate as soon as may be, and shall be considered by the Senate at its next meeting. The Senate shall have power, by a resolution passed by a majority of not less than two-thirds of the members present at such meeting, to cancel or refer for reconsideration but not to amend any such Regulation:

Provided that a Regulation, which involves expenditure from the University fund, shall not be effective until it is approved by the Syndicate.

- (3) The Vice-Chancellor shall, on the application of not less one-third of the members of the Senate, suspend the operation of any such Regulation until the Senate has considered it as provided in sub-section (2).
- Rules. 26B. (1) Any authority of the University specified in clauses (iii) and (iv) or declared under clause (v) of section 14 and any other Board of the University may, subject to the approval of the Syndicate, make Rules consistent with this Act, the Statutes, Ordinances and Regulations providing for all matters solely concerning such authority or Board.
 - (2) All Rules made by any authority or Board shall have effect from such date as the authority or the Board making the Rules may direct:

Provided that a rule which involves expenditure from the University fund shall not be effective until it is approved by the Syndicate.".

- In the principal Act, in section 29,
 - (1) in sub-section (1), after the words "The Syndicate shall have the power", the words "after consultation with the Board of Post-Graduate Teaching and Research" shall be inserted;

Amendment of section 29 of Guj. 40 of

- (2) in sub-section (4), for the words "the Syndicate shall grant or refuse", the words "the Syndicate shall, after obtaining the opinion of the Board of Post-Graduate Teaching and Research, grant or refuse" shall be substituted.
- 20. In the principal Act, in section 30,--(1) in sub-section (1),--

Amendment of section 30 of Guj. 40 of 1965.

- (a) after the words "The Syndicate shall have the power", the words "after consultation with the Board of Post-Graduate Teaching and Research" shall be inserted;
- (b) after the words "in the Ayurvedic System of Medicine", the words "approved by the Board of Post-Graduate Teaching and Research" shall be inserted;
- (2) in sub-section (4), for the words "the Syndicate shall grant or refuse", the words "the Syndicate shall, after obtaining the opinion of the Board of Post-Graduate Teaching and Research, grant or refuse" shall be substituted.
- In the principal Act, in section 33, in sub-section (5), after the words Amendment of "to be necessary", the words "and after consulting the Board of Post-section 33 of Guj. Graduate Teaching and Research" shall be inserted.

40 of 1965.

22. In the principal Act, in section 34, in sub-section (3), after the words Amendment 'to be necessary", the words "and after consulting the Board of Post-Graduate Teaching and Research" shall be inserted.

of section 34 of Guj. 40 of 1965.

In the principal Act, in section 35, in sub-section (3), for the words Amendment "the Statutes and Ordinances", the words "the Statutes, Ordinances and of section 35 Regulations" shall be substituted.

of Guj. 40 of 1965.

24. In the principal Act, in section 37, the words "or, as the case may be, Regulations" shall be added at the end.

Amendment of section 37 of Guj.40 of 1965.

25. In the principal Act, in section 40, in sub-section (1),-

Amendment of section 40 of Gui. 40 of

(1) for the words "the Syndicate and of the Senate", the words "the 1965. Syndicate, or, as the case may be, the Board of Post-Graduate Teaching and Research and the Senate" shall be substituted;

(2) for the words "in the opinion of the Syndicate and the Senate", the words "in the opinion of the Syndicate, or, as the case may be, of the Board of Post-Graduate Teaching and Research and the Senate" shall be substituted.

Amendment 26. In the principal Act, in section 42, after sub-section (3), the of Guj. 40 of following sub-section shall be added, namely: -1965.

- "(4) Any grant given by the Government of India for the purpose of Post-Graduate Teaching and Research shall be applied for meeting—
 - (a) expenses incurred for that purpose; and
 - (b) expenses incurred by the Board of Post-Graduate Teaching and Research in exercise of its powers and performance of its duties under section 20B.".

Insertion of 27. In the principal Act, after section 61, the following section shall be new section 62 in Guj. 40 added, namely:
"Repeal of 62. On the commencement of the Gujarat Ayurved

certain
Statutes and
Ordinances. (i)

University (Amendment) Act, 2003,—
the Standing Managing Committee shall be known as
the Board of Post-Graduate Teaching and Research,

i) the Statute 180 and the Ordinances 148 to 157 and any other Statutes or Ordinances relating to the said

committee shall stand repealed.".

STATEMENT OF OBJECTS AND REASONS.

There is an Institute of Post-Graduate Teaching and Research of the Gujarat Ayurved University at Jamnagar. The said Institute is managed by a Standing Manaagement Committee and is financed totally by the Government of India. The Government of India desires that the Committee may be given a status independent from the Syndicate of the University. It is proposed to name the Committee as the Board of Post-Graduate Teaching and Research and to give the Board such a status.

Similar to the provisions contained in some of the University Acts of the State, it is proposed to provide for a Search Committee for recommending to the State Government three persons for being appointed as Vice-Chancellor and to empower the State Government to appoint one out of the three as Vice-Chancellor and to determine the emoluments to be paid to him and the terms and conditions subject to which he would hold office.

It is also proposed to empower the Vice-Chancellor to require an authority of the University to reconsider any order or resolution of that Authority or doing of anything which is about to be done or is being done by or on behalf of the University if such order or resolution is inconsistent with the provisions of the Act, Statutes, Ordinances, Regulations or Rules or is not in the interest of the University or is likely to lead to breach of peace. Where the Authority revises or modifies the order or resolution in a manner which is inconsistent with the manner suggested by the Vice-Chancellor, it is proposed to further empower the Vice-Chancellor to refer the matter to the State Government for its decision.

The Bill seeks to amend the said Act to achieve the aforesaid objects.

The following notes explain the important clauses of the Bill:--

- Clause 3.- This clause seeks to amend sub-clause (1) of section 3 of the Act to include the Board of Post-Graduate Teaching and Research of the University as a constituent of the University.
- Clause 5.- This clause seeks to amend section 8 to include the Director of the Board of Post-Graduate Teaching and Research as one of the officers of the University.
- Chancellor to appoint a Search Committee to recommend three persons for being appointed as Vice-Chancellor, to empower the State Government to appoint Vice-Chancellor out of the three persons so recommended and to determine the emoluments to be paid to the Vice-Chancellor and the terms and conditions subject to which he would hold office.

- Clause 7.- This clause seeks to amend section 11 to take power to the Vice-Chancellor to require the Authority to reconsider any order or resolution of the authority or the doing of anything which is about to be done or is being done by or on behalf of the University if such order or resolution is inconsistent with the provisions of the Act or any Statute, Ordinance, Rule or Regulation or is not in the interest of the University or is likely to lead to breach of peace. Where the authority revises or modifies the order or resolution in such manner as to be inconsistent with the manner stated by the Vice-Chancellor, the Vice-Chancellor is empowered to refer the matter to the State Government for its decision. On such reference, the State Government is empowered to revise or modify the order or resolution.
- Clause 8.- This clause seeks to amend section 12 with a view to requiring the Registrar to act as the Secretary of the Board of Post-Graduate Teaching and Research.
- Clause 9.- This clause seeks to insert new section 12A with a view to providing for the Director of the Board of Post-Graduate Teaching and Research.
- Clause 10.- This clause seeks to amend section 14 with a view to including the Board of Post-Graduate Teaching and Research as one of the authorities of the University.
- Clause 11.- This clause seeks to amend section 15 with a view to provide representation in the Senate to the Director of Board of Post-Graduate Teaching and Research, the Advisor, Avurved, Ministry of Health and Family Welfare, Government of India and to a person elected by the teachers of the Board of Post-Graduate Teaching and Research.
- Clause 12.— This clause seeks to amend section 18 with a view to empowering the Senate to review the acts of the Board of Post-Graduate Teaching and Research and to consider the regulation proposed by the Board and where necessary to cancel or refer back the resolution.
- Clause 13.— This clause seeks to amend section 19 to provide representation in the Syndicate to the Advisor, Ayurved, Department of Indian System of Medicine and Homoeopathy, Ministry of Health and Family Welfare of the Government of India, to the Director of Board of Post-Graduate Teaching and Research and to a person who is elected to the Senate from amongst the teachers of the Board of Post-Graduate Teaching and Research.
- Clause 14.— This clause seeks to amend section 20 so as to make the existing powers and duties of the Syndicate mutually exclusive with those proposed to be conferred or imposed on the Board of Post-Graduate Teaching and Research by new section 20B proposed to be inserted by clause 15.

- Clause 15.- This clause seeks to insert a new section 20A with a view to provide for the constitution of the Board of Post-Graduate Teaching and Research. The said constitution is similar to the existing constitution of Standing Management Committee. The said clause 15 also seeks to insert new section 20B so as to provide for powers and duties of the Board of Post-Graduate Teaching and Research which are mutually exclusive with those of the Syndicate.
- Clause 16.- This clause seeks to amend section 25 so as to empower the Board of Post-Graduate Teaching and Research to propose to the Senate draft of a Statute to be passed by the Senate.
- Clause 17.- This clause seeks to amend sub-section (1) of section 26 so as to make certain powers of the Syndicate to make Ordinances, mutually exclusive with those of the Board of Post-Graduate Teaching and Research to make regulations under new section 26A proposed to be inserted by clause 18.
- Clause 18.- This clause seeks to insert new sections 26A and 26B. Section 26A seeks to empower the Board of Post-Graduate Teaching and Research to make regulations and section 26B seeks to empower any authority of the University specified in clauses (iii) and (iv) or declared under clause (v) of section 14 to make rules providing for all matters solely concerning such authority or Board.
- Clauses 19, 20,21 and 22.- These clauses seek to amend sections 29, 30, 33 and 34 so as to require the Syndicate to consult the Board of Post-Graduate Teaching and Research before grant of recognition or approval to an institution or before withdrawal of approval so granted and the Senate to consult the Board before withdrawal of recognition of an institution.
- Clause 25.- This clause seeks to amend section 40 so as to empower the Board of Post-Graduate Teaching and Research to recommend along with the Syndicate to remove the name of any person from the register of graduates or withdraw from any person a diploma or a degree in the circumstances stated therein.
- Clause 26.- This clause seeks to amend section 42 so as to provide that any grant given by the Union Government for the purpose of Post-Graduate Teaching and Research shall be applied for meeting expenses incurred for that purpose only.
- Clause 27.- This clause seeks to provide for renaming of the Standing Managing Committee as the Board of Post-Graduate Teaching and Research and repeal of certain Statutes and Ordinances relating to the said Committee.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers in the following respects, namely:--

- Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint the date on which the provisions of the Act shall come into force.
- Clause 4.— (i) Sub-clauses (a) and (b) of clause (10) of section 4 proposed to be amended by sub-clause (1) of this clause empowers the Board of Post-Graduate Teaching and Research to prescribe by regulations the manner in which persons are to pursue approved courses of study in the University and conditions under which the persons have to carry on research;
 - (ii) clause (12) of section 4 proposed to be amended by subclause (2) of this clause empowers the Board of Post-Graduate Teaching and Research to determine by regulations the diplomas to be granted, and lectures, instruction and training to be provided to persons who are not enrolled as students of University.
- Clause 6.— (i) Sub-section (1A) sought to be inserted in section 10 by sub-clause (2) of this clause empowers the Senate to prescribe by statutes the manner in which one person shall be nominated by the Syndicate and the other person shall be nominated by the Vice-Chancellors of all the Universities of the State on the Committee constituted for selection of a person for appointment to the office of the Vice-Chancellor;
 - (ii) sub-section (1B) sought to be inserted in section 10 by sub-clause (2) of this clause empowers the Senate to prescribe by statutes the time within which and the manner in which the Committee shall select three persons for being appointed as Vice-Chancellor:
- (iii) sub-section (3) of section 10 proposed to be amended by sub-clause (3) of this clause empowers the State Government to determine the emoluments to be paid to the Vice-Chancellor and other terms and conditions subject to which he shall hold office.
- Clause 7.- Sub-section (6) of section 11 proposed to be amended by sub-clause (5) of this clause empowers the Board of Post-Graduate Teaching and Research to prescribe by regulations the other powers to be exercised by the Vice-Chancellor.
- Clause 9.- Section 12A sought to be inserted by this clause empowers the Board of Post-Graduate Teaching and Research to—
 - (i) prescribe regulations in accordance with which the Director of the Board is to be appointed,
 - (ii) determine by regulations emoluments and conditions of service of the Director, and
 - (iii) prescribe by regulations the powers to be exercised and duties to be performed by the Director.

- Clause 11.— Item (ia) sought to be inserted in paragraph (A) under the heading "Class II-Ordinary Members", in sub-section (1) of section 15 by sub-paragraph (ii) of paragraph (a) of sub-clause (2) of this clause empowers the Senate to prescribe by statutes the manner in which one member is to be elected by teachers of the Board of Post-Graduate Teaching and Research from amongst themselves.
- Clause 12.— Clause (xi) of sub-section (2) of section 18 proposed to be amended by paragraph (b) of sub-clause (2) of this clause seeks to empower the Board of Post-Graduate Teaching and Research to prescribe by regulations other powers to be exercised and other duties to be performed by the Senate.
- Clause 15.— Clause (xiii) of section 20B proposed to be inserted by this clause empowers the Board of Post-Graduate Teaching and Research to make, amend and cancel regulations.
- Clause 18.— Section 26A proposed to be inserted by this clause empowers the Board of Post-Graduate Teaching and Research to frame Regulations to provide for all or any of the matters specified therein and generally all matters which by the Act or Statutes may be provided by Regulations and all matters for which provision is, in the opinion of the Board, is necessary for the exercise of its powers and performance of its duties. Clause 26B proposed to be inserted by this clause empowers any authority of the University specified in clauses (iii) and (iv) or declared under clause (v) of section 14 and any other Board of the University to make rules providing for all matters solely concerning such authority or Board.
- Clause 23.— Sub-section (3) of section 35 proposed to be amended by this clause seeks to empower the Board of Post-Graduate Teaching and Research to prescribe by regulations the terms and conditions on which the University may maintain University centres at places other than the headquarters of the University.
- Clause 24.— Section 37 proposed to be amended by this clause empowers the Board of Post-Graduate Teaching and Research to prescribe by regulations conditions under which every student of the University shall reside in a hostel.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 1st September, 2003.

INDRAVIJAYSINH JADEJA.

By order and in the name of the Governor of Gujarat,

Gandhinagar,
Dated the 2nd September, 2003.

V. M. KOTHARE,

Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department. Amendment of section 2 of Bom, XXV of 1949. 2. In the Bombay Prohibition Act, 1949 (hereinafter referred to as "the principal Act"), in section 2, in clause (39A), the following shall be inserted at the end, namely:-

Bom.XXV of 1949.

"and shall include on chemical analysis, if it contains -

- (i) total sugar (expressed as invert sugar) less than 90 per cent. and sucrose less than 60 per cent., or
- (ii) extraneous matter insoluble in water more than 2 per cent., or
- (iii) total ash more than 6 per cent., or
- (iv) ash insoluble in by hydrochloric acid (HCL) more than 0.5 per cent., or
- (v) more than 10 per cent. of moisture, or
- (vi) sulphur dioxide in concentration exceeding 70 parts per million;".

Amendment of section 29 of Born. XXV of 1949.

3. In the principal Act, in section 29, for the words "mhowra flowers or molasses" occurring at two places, the words "mhowra flowers, molasses, rotten gur or ammonium chloride," shall be substituted.

- Clause 15.- This clause seeks to insert a new section 20A with a view to provide for the constitution of the Board of Post-Graduate Teaching and Research. The said constitution is similar to the existing constitution of Standing Management Committee. The said clause 15 also seeks to insert new section 20B so as to provide for powers and duties of the Board of Post-Graduate Teaching and Research which are mutually exclusive with those of the Syndicate.
- Clause 16.- This clause seeks to amend section 25 so as to empower the Board of Post-Graduate Teaching and Research to propose to the Senate draft of a Statute to be passed by the Senate.
- Clause 17.— This clause seeks to amend sub-section (1) of section 26 so as to make certain powers of the Syndicate to make Ordinances, mutually exclusive with those of the Board of Post-Graduate Teaching and Research to make regulations under new section 26A proposed to be inserted by clause 18.
- Clause 18.- This clause seeks to insert new sections 26A and 26B. Section 26A seeks to empower the Board of Post-Graduate Teaching and Research to make regulations and section 26B seeks to empower any authority of the University specified in clauses (iii) and (iv) or declared under clause (v) of section 14 to make rules providing for all matters solely concerning such authority or Board.
- Clauses 19, 20,21 and 22.— These clauses seek to amend sections 29, 30, 33 and 34 so as to require the Syndicate to consult the Board of Post-Graduate Teaching and Research before grant of recognition or approval to an institution or before withdrawal of approval so granted and the Senate to consult the Board before withdrawal of recognition of an institution.
- Clause 25.- This clause seeks to amend section 40 so as to empower the Board of Post-Graduate Teaching and Research to recommend along with the Syndicate to remove the name of any person from the register of graduates or withdraw from any person a diploma or a degree in the circumstances stated therein.
- Clause 26.- This clause seeks to amend section 42 so as to provide that any grant given by the Union Government for the purpose of Post-Graduate Teaching and Research shall be applied for meeting expenses incurred for that purpose only.
- Clause 27.- This clause seeks to provide for renaming of the Standing Managing Committee as the Board of Post-Graduate Teaching and Research and repeal of certain Statutes and Ordinances relating to the said Committee.

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PART - V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the Proviso to the rule 127 A of the Gujarat Legislative Assembly rules:-

THE BOMBAY PROHIBITION (GUJARAT SECOND AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 46 OF 2003.

A BILL

further to amend the Bombay Prohibition Act, 1949.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Bombay Prohibition (Gujarat Second Amendment) Act, 2003.

nent

Short title and

commencement.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Amendment of section 2 of Bom, XXV of 1949. 2. In the Bombay Prohibition Act, 1949 (hereinafter referred to as "the principal Act"), in section 2, in clause (39A), the following shall be inserted at the end, namely:-

Bom.XXV of

"and shall include on chemical analysis, if it contains -

- (i) total sugar (expressed as invert sugar) less than 90 per cent. and sucrose less than 60 per cent., or
- (ii) extraneous matter insoluble in water more than 2 per cent., or
- (iii) total ash more than 6 per cent., or
- (iv) ash insoluble in by hydrochloric acid (HCL) more than 0.5 per cent., or
- (v) more than 10 per cent. of moisture, or
- (vi) sulphur dioxide in concentration exceeding 70 parts per million;".

Amendment of section 29 of Born, XXV of 1949.

3. In the principal Act, in section 29, for the words "mhowra flowers or molasses" occurring at two places, the words "mhowra flowers, molasses, rotten gur or ammonium chloride," shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The State of Gujarat intends to implement the strict prohibition policy through the provisions of the Bombay Prohibition Act. 1949 and the rules made thereunder. However, it has been experienced that due to such preventive measures, some genuine traders of rotten gur and arimonium chioride are being put at trouble during the through transport. It is, therefore, considered necessary to amend section 29 so as to empower the State Government to prescribe the conditions subject to which passes can be issued to such traders for through transport of rotten gur and ammonium chloride.

In order to adopt the scientific method, it is also considered necessary to amend the definition of "rotten gur" in clause (39A) of section 2 of the said Act.

The Bill seeks to amend the Act to achieve the aforesaid objects.

AMIT SHAH

MEMORANDUM REGARDING DELEGATED LEGISATION

The Bill involves delegation of legislative powers in the following respects:-

Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.

The delegation of legislative power, as aforesaid, is necessary and is of a normal character.

Dated the 1st September, 2003.

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AMIT SHAH.

By order and in the name of the Governor of Gujarat,

V. M. KOTHARE,

Gandhinagar,
Dated the 2nd September, 2003

Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the Proviso to the rule 127 A of the Gujarat Legislative Assembly rules:-

THE GUJARAT DEVELOPMENT CORPORATIONS LAWS (AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 47 2003.

A BILL

further to amend the Gujarat Scheduled Castes Development Corporation Act, 1985 and the Gujarat Backward Classes Development Corporation Act, 1985.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

- 1. (1) This Act may be called the Gujarat Development Short title and Corporations Laws (Amendment) Act, 2003.
- (2) It shall come into force on such date as the State Government may, by notification in *Official Gazette*, appoint.

H-664-1

Amendment of section 5 of Guj. 10 of 1985.

2. In the Gujarat Scheduled Castes Development Corporation Act, 1985, in section 5, to sub-section (1), after second proviso, following proviso shall be added, namely:-

Guj. 10 of 1985.

"Provided also that the State Government shall nominate at least one woman as non-official member.".

Amendment of section 6 of Guj. 11 of 1985.

3. In the Gujarat Backward Classes Development Corporation Act, 1985, in section 6, to sub-section (1), after second proviso, following proviso shall be added, namely:-

Guj. 11 of 1985.

"Provided also that the State Government shall nominate at least one woman as non-official member.".

STATEMENT OF OBJECTS AND REASONS

Sub-section (1) of section 5 of the Gujarat Scheduled Castes Development Corporation Act, 1985 provides that the State Government shall nominate not more than fifteen directors for constituting the Corporation. Of these, not less than three shall be official directors and the rest shall be non-official directors.

Similarly, sub-section (1) of section 6 of the Gujarat Backward Classes Development Corporation Act, 1985 provides that the State Government shall nominate not more than fifteen directors for constituting the Corporation. Of these, not less than three shall be official directors and the rest shall be non-official directors.

A woman director can articulate the problems of women better, so it is considered necessary to provide specifically that one of the non-official directors shall be a woman nominated by the State Government in both the aforementioned Acts.

This Bill seeks to amend the said Acts to achieve the aforesaid obiect.

RAMANLAL VORA

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves delegation of legislative powers in the following respects:-

Clause 1.-Sub-clause (2) of this clause empowers the State Government to appoint by notification in the Official Gazette the date on which the Act shall come into force.

The delegation of legislative power as aforesaid is necessary and is of a normal character.

Dated the 1st September, 2003.

RAMANLAL VORA.

By order and in the name of the Governor of Gujarat,

Gandhinagar, Dated the 2nd September, 2003.

V. M. KOTHARE,

Secretary to the Government of Gujarat,

Legislative and Parliamentary Affairs Department.

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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the Proviso to the rule 127 A of the Gujarat Legislative Assembly rules:-

THE CODE OF CRIMINAL PROCEDURE (GUJARAT AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 48 OF 2003.

A BILL

further to amend the Code of Criminal Procedure, 1973 in its application to the State of Gujarat.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called The Code of Criminal Procedure (Gujarat Amendment) Act, 2003.

Short title and commencement.

(2) It shall be deemed to have come into force on the 16th August, 2003.

H-665-1

Amendment of section 167 of Act 2 of 1974. 2. In the Code of Criminal Procedure. 1973 (hereinafter referred to as "the principal Act") in its application to the State of Gujarat, in section 167, in sub-section (2) -

2 of 1974.

- (1) in the proviso, for paragraph (b), the following paragraph shall be substituted, namely:-
 - "(b) no Magistrate shall authorise further detention in any custody under this section unless-
 - (i) where the accused is in the custody of police, he is produced in person before the Magistrate, and
 - where the accused is otherwise than in the custody of the police, he is produced before the Magistrate either in person or through the medium of electronic video linkage, in accordance with the direction of the Magistrate.";
 - (2) in Explanation II, after the words "whether an accused person was produced before the Magistrate", the words "in person or, as the case may be, through the medium of electronic video linkage" shall be inserted.

Repeal and savings.

- 3. (1) The Code of Criminal Procedure (Gujarat Amendment) Ordinance, 2003 is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

Guj. Ord. 3 of 2003.

STATEMENT OF OBJECTS AND REASONS

The existing paragraph (b) of the proviso to sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 in its application to the State of Gujarat prohibits a Magistrate from authorizing detention in any custody under the said section 167 unless the accused is produced before him. This provision entails the carriage of an accused from the custody in which he is kept to the court. Such carriage involves employment of police for the escort of the accused and expenditure to the State Exchequer for his carriage. Apart from such employment and expenditure, such carriage also involves the risk of escape of the accused from the custody of the police or to the life of the accused. In order to restrict such employment, expenditure and risk to the minimum, it was considered necessary to provide for the production of an accused before the Magistrate either in person or through the medium of electronic video linkage in accordance with the direction of the Magistrate, where the accused is otherwise than in the custody of the police.

As the Gujarat Legislative Assembly was not in session at that time, the Code of Criminal Procedure (Gujarat Amendment) Ordinance, 2003 was promulgated to amend the said Code to achieve the aforesaid object. This Bill seeks to replace the said Ordinance by an Act of the State Legislature.

AMIT SHAH.

FINANCIAL MEMORANDUM

Sub-section (2) of section 167 of the Criminal Procedure Code, 1973 (2 of 1974), proposed to be amended by clause 2 of the Bill which, if enacted, and brought into force would involve expenditure of approximately Rs. 12 lacs (rupees twelve lacs only) from the Consolidated Fund of the State.

Dated the 2nd September, 2003. By order and in the name of the Governor of Gujarat,

Gandhinagar,
Dated the 2nd September, 2003.

V. M. KOTHARE,

Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the Proviso to the rule 127 A of the Gujarat Legislative Assembly rules:-

THE GUJARAT PROTECTION OF INTEREST OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) BILL, 2003.

GUJARAT BILL NO. 49 OF 2003.

ABILL

to protect the interest of depositors of the Financial Establishments and for the matters connected therewith or incidental thereto.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Protection of Interest of Depositors (in Financial Establishments) Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

- Definitions. 2. In this Act, unless the context otherwise requires, -
 - (a) "Competent Authority" means the Competent Authority appointed under section 5;
 - (b) "Designated Court" means the Designated Court constituted under section 9;
 - (c) "deposit" includes and shall be deemed always to have been included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include
 - (i) amounts raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given and regulations made by the Securities and Exchange Board of India, established under the Securities and Exchange Board of India Act, 1992;

15 of 1992.

- (ii) amounts contributed as capital by partners of a firm;
- (iii) amounts received from a Scheduled Bank or a Cooperative Bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;

10 of 1949.

- (iv) any amount received from -
 - (a) the Industrial Development Bank of India,
 - (b) the Gujarat State Financial Corporation,
 - (c) any financial institution specified in or under section 4A of the Companies Act, 1956,

1 of 1956.

- (d) any other institution as the State Government may by an order specify;
- (v) amounts received in the ordinary course of business by way of
 - (a) security deposit,
 - (b) dealership deposit,

- (c) earnest money, or
- (d) advance against order for goods or service;
- (vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State; and
- (vii) any amount received by way of subscriptions in respect of a Chit.

Explanation. - For the purpose of this clause -

40 of 1982.

- (i) Chit shall have the same meaning as assigned to it in clause (b) of section 2 of the Chit Funds Act, 1982;
- (ii) Any credit given by a seller to a buyer on the sale of any property whether movable or immovable shall not deemed to be a deposit;
- (d) "Financial Establishment" means any person or group of individuals accepting deposits under any scheme or arrangement or in any other manner but does not include a Corporation owned or controlled by any State Government or the Central Government or a banking Company as defined under clause (c) of section 5 of the Banking Regulation Act, 1949.

10 of 1949.

3. Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity alongwith any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extent to ten lacs of rupees and such Financial Establishment also shall be liable for a fine which may extend to ten lacs of rupees:

Provided that in the absence of special and adequate reasons recorded in the judgement of the court, the imprisonment shall not be less than three years and the fine shall not be less than one lac of rupees and in case of imposition of fine on Financial Establishment, it shall not be less than five lacs of rupees.

Fraudulent defaults by Financial Establishment. Explanation. — For the purpose of this section, a Financial Establishment, which commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such defaults due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed shall, be deemed to have committed a default or failed to render the specific service, fraudulently.

Attachment of properties on default of return of deposit.

- 4. (1) Notwithstanding anything contained in any other law for the time being in force, -
 - (i) Where upon complaint received from the depositor or otherwise, the State Government is satisfied that any Financial Establishment has failed, -
 - (a) to return the deposit on maturity on demand by the depositor; or
 - (b) to pay interest or other assured benefit; or
 - (c) to provide the service promised against such deposit; or
 - (ii) Where the State Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them;

and if the State Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the State Government may, in order to protect the interest of the depositors of such Financial Establishment, after recording the reasons in writing, issue an order by publishing it in the Official Gazette, for attaching the money, property or assets belonging to or believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits collected by the Financial Establishment, or if it transpires that such moneys, properties or assets, is not available for attachment or not sufficient for repayment of the deposits, such other property or assets of the said Financial Establishment or of the promoter, director, partner or member of the said establishment as the State Government may think fit.

- (2) On publication of the order under sub-section (1), all the moneys, properties and assets of the Financial Establishment and of the person mentioned therein shall forthwith vest in the Competent Authority pending further order from the Designated Court.
- (3) The Collector of a district shall be competent within his jurisdiction to receive the complaint under sub-section (1) and he shall forward such complaint alongwith his report to the State Government at the earliest and shall send a copy of the complaint to the concerned Superintendent of Police or Commissioner of Police, as the case may be, for investigation.
- 5. (1) The State Government shall while issuing the order under sub-section (1) of section 4, appoint an officer not below the rank of the Deputy Collector to be the Competent Authority to exercise control over the moneys, properties and assets attached by the State Government under section 4.

Appointment of Competent Authority.

- (2) The Competent Authority shall have such other powers and discharge such other functions as may be prescribed by rules for carrying out the purposes of this Act.
- (3) The Competent Authority shall apply, within thirty days from the date of the publication of the order made under section 4 to the Designated Court, accompanied by one or more affidavits stating therein the grounds on which the State Government has issued the said order and the amount of moneys or other properties or assets belonging to or believed to have been acquired out of the deposits and the details, if any, or persons in whose name such property is believed to have been invested or acquired or any other property attached under section 4, for such further orders as the Designated Court may find necessary.
- (4) The Competent Authority may, also make an application to any Special Court or Designated Court or any other judicial forum established or constituted or entrusted with the powers by any other State Government for adjudicating any issue or subject matter pertaining to moneys or properties or assets of the Financial Establishment under any similar enactment in respect of moneys or properties or assets belonging to or ostensibly belonging to the Financial Establishment or of any person notified under this Act situated within the territorial jurisdiction of that Special Court or Designated Court or any judicial forum, as the case may be, for passing appropriate orders to give effect to the provisions of this Act.

Duties and powers of Competent Authority.

6. (1) The Competent Authority, on receipt of order of his appointment, shall take such necessary actions as it is necessary or expedient for taking physical possession of all

the moneys, properties and assets of the concerned Financial Establishment expeditiously and he shall have all the powers which are necessary for the aforesaid purpose.

- (2) Without prejudice to the generality of the powers vested under sub-section (1), the Competent Authority shall be entitled to -
 - (a) require assistance of any police authority or any other authority or person and on such requisition, it shall be the duty of the police authority or such other authority or person to extend necessary assistance;
 - (b) open bank accounts in any scheduled commercial bank and credit all moneys realised and operate the bank accounts while dealing;
 - (c) to direct the person to furnish the necessary information relating to moneys, properties and assets of the Financial Establishment to hand over possession of such moneys, properties and assets to the Competent Authority and such person shall comply with the requisition without any loss of time;
 - (d) appoint legal practitioner or chartered accountant or any other person whose services are necessary for taking possession of assets and realisation of the assets of the Financial Establishment;
 - (e) sell, receive, transfer, endorse, negotiate or otherwise deal with any marketable security or negotiable instrument belonging to or in the control of the Financial Establishment and give proper discharge for the same;
 - (f) sell, transfer or otherwise realise any movable or immovable property belonging to or in the control of the Financial Establishment either by public auction or with the prior approval of the Designated Court by private arrangements:

Provided that the perishable items of assets shall be sold by public auction at the earliest as the Competent Authority deems fit;

(g) make payment as per the orders passed by the Designated Court from out of the bank accounts; and

(h) do all and every acts and deeds which would be necessary for the speedy realisation of the assets of the Financial Establishment.

Explanation.- For the purpose of this section, the expression "Financial Establishment" includes the promoters, directors, partners, managers or members of the said establishment or any other person whose property or assets have been attached under section 4.

7. (1) The Competent Authority shall, within thirty days from the date of his appointment, assess the assets, deposits and liabilities of the Financial Establishment and submit the statement thereof to the Designated Court.

Assessment of assets, deposits and liabilities.

- (2) The Competent Authority thereafter shall issue notice either individually or by means of effective media publication inviting the claims by secured creditors, if any, and also the depositors of the Financial Establishment to submit their claims with sufficient proof in support thereof.
- (3) Every notice under sub-section (2) shall specify that if the statement of claims is not sent to the Competent Authority before the expiry of the period of one month from the date of such notice, the claims shall not be treated as claim entitled to be paid under the provisions of this Act.
- (4) Every notice to a secured creditor shall require him to value the security before the expiry of the period of one month from the date of the notice and such notice shall also specify that if the statement of the claim together with the valuation of the security is not sent to the Competent Authority within such period, the Competent Authority himself shall value the security to the best of his judgement and his valuation shall be binding on such secured creditors.
- (5) The Competent Authority shall prepare a statement of dues of the Financial Establishment which is due from various debtors, the assessments of the value of the property and assets of the Financial Establishment and the list of the depositors and their respective dues; and submit the same to the Designated Court.
- 8. The Competent Authority shall, after complying with the provisions of section 7, make an application to the Designated Court seeking permission to make payment to the depositors from out of the money realised. While making such application, the Competent Authority shall assess the liability to the depositors and the other liabilities and in case the money realised or realisable is not sufficient to meet with the entire liability, make a submission to the Designated Court seeking permission for making

Report by Competent Authority.

payment to the depositors and disburse the money as per the orders of the Designated Court.

Designated Court.

- 9. (1) For the purposes of this Act, the State Government may, with the concurrence of the Chief Justice of the High Court of Gujarat, by notification, in the Official Gazette, constitute one or more Designated Court of the level of the Court of a District and Sessions Judge for such area or for such case or group of cases or such class as may be specified in the notification.
- (2) No Court, other than the Designated Court shall have jurisdiction to deal with or decide any question which the Designated Court is empowered to deal with or decide by or under this Act.
- (3) Any case or proceeding pending before any Court or any authority in relation to the moneys, properties or assets of the Financial Establishment covered by an order made under section 4, shall stand transferred to the respective Designated Court and shall be dealt with and decided by such Court in accordance with the provisions of this Act.

Powers of Designated Court regarding attachment.

- 10. (1) Upon receipt of an application made under section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose moneys, properties or assets are attached by the State Government and vested in the Competent Authority under section 4, a notice accompanied by the application and affidavits and copies of the evidence, if any, recorded, calling upon the said establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute.
- (2) The Designated Court shall also issue such notice, to all other persons represented to it, as having or being likely to claim any interest or title in the property of the Financial Establishment or of the person to whom the notice is issued under sub-section (1), calling upon all such persons to appear on the same date as that specified in the notice and to make objection if they so desire, to the attachment of the moneys, properties or assets or any portion thereof on the ground that they have interest in such property or portion thereof.
- (3) Any person claiming an interest in the moneys, properties or assets attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under sub-section (4) or sub-section (6).
- (4) The Designated Court snall, if no objection is made or no cause is shown on or before the specified date under sub-section (2), forthwith pass

5 of 1908.

an order making the order of attachment absolute, and issue such direction as may be necessary for realisation of the property, and assets and moneys attached and for equitable distribution among the depositors of the money so realised.

- (5) If cause shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act, follow the summary procedure as contemplated under Order 37 of the Civil Procedure Code, 1908 and exercise all the powers of a court in hearing a suit under the said Code and any person making an objection shall be required to adduce evidence to show that at the date of the attachment he had some interest in the property so attached.
- (6) After investigation under sub-section (5), the Designated Court shall pass an order either making the order of attachment passed under sub-section (1) of section 4 absolute or varying it by releasing a portion of the property or assets or moneys from attachment or canceling the order of attachment:

Provided that the Designated Court shall not release from attachment any interest, which it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has in the property or assets, unless it is also satisfied that there will remain under attachment an amount of property of value not less than the value that is required for repayment to the depositors of such Financial Establishment.

- (7) Where an application is made by any person duly authorised or constituted or specified by any other State Government under similar enactment empowering him to exercise control over any moneys or properties or assets attached by that State Government, the Designated Court shall exercise all its powers, as if, such an application were made under this Act and pass appropriate order or give direction on such application so as to give effect to the provisions of such enactment.
- 11. (1) The Designated Court shall have all the powers for giving effect to the provisions of this Act.
- (2) Without prejudice to the generality of sub-section (1), the Designated Court may
 - (a) give any direction to the Competent Authority as it deems fit, for effective implementation of the provisions of this Act;
 - (b) approve the statement of dues of the Financial Establishment which is due from various debtors, the assessment of the value

Power of
Designated
Court
regarding
realisation of
assets and
payment to
depositors.

- of the assets of the Financial Establishment and finalise the list of the depositors and their respective dues;
- (c) direct the Competent Authority to take possession of any property or assets belonging to or in the control of the Financial Establishment and to sell, transfer or realise the attached property or assets either by public auction or by private sale as it deems fit depending upon the nature of property or assets and credit the sale proceeds thereof to the bank accounts;
- (d) approve the necessary expenditure incurred by the Competent Authority for taking possession and realisation of the properties and assets of the Financial Establishment;
- (e) pass an order to make payment to the depositors by the Competent Authority or for proportionate payment to the depositors in the case where the moneys so realised is not sufficient to meet with the entire deposit liability; and
- (f) pass any order appropriate for realisation of the property or assets of the Financial Establishment and repayment to the depositors of such Financial Establishment or on any matter incidental thereto.

Explanation. – For the purpose of this section, the expression "Financial Establishment" includes the promoter, director, partner, manager or member of the said Establishment or any other person whose properties or assets have been attached under section 4.

Attachment of property of malafide transferees.

- 12. (1) Where the property or assets available for attachment of a Financial Establishment or other person referred to in section 4 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors and where the Designated Court is satisfied by an affidavit or otherwise, that there is reason to believe that the said Financial Establishment has transferred any of the property otherwise than in good faith or for inadequate consideration, the Designated Court may, by notice, require any transferree of such property, whether or not he received the property directly from the said Financial Establishment, to appear, on a date to be specified in the notice and show cause why so much of the transferree's property as is equivalent to the proper value of the property transferred should not be attached.
- (2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in subsection (5) of section 10, the Designated Court is satisfied that the transfer of the property to the said transferee was not in good faith and for not for adequate consideration, the Designated Court shall order the attachment of so much of the said transferee's property as is in the opinion of the Designated Court equivalent to the proper value of the property transferred.

13. Any Financial Establishment or person whose moneys, properties or assets have been or are about to be attached under this Act may, at any time, apply to the Designated Court for permission to give security in lieu of such attachment and where the security offered and given is, in the opinion of the Designated Court, satisfactory and sufficient, the Designated Court may modify or cancel the order of attachment or as the case may be, refrain from passing the order of attachment.

Security in lieu of attachment.

14. The Designated Court may, on the application of any person interested in any moneys, properties or assets attached and vested in the Competent Authority under this Act and after giving the Competent Authority an opportunity of being heard, make such order as the Designated Court considers just and reasonable for -

Administration of property attached.

- (a) providing from such of the moneys, properties or assets attached and such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in the Designated Court under section 3;
- (b) safeguarding, so far as may be practicable, the interest of any business affected by the attachment and in particular, the interest of any partner or any other person connected with such business.
- 15. (1) Any person, including the Competent Authority, if aggrieved by an order of the Designated Court, may appeal to the High Court within thirty days from the date of such order.

Appeal.

- 36 of 1963.
- (2) In computing the period of limitation, the provisions of sections 4 and 12 of the Limitation Act, 1963 shall so far as may be, apply.
- 16. The State Government may, by an order, appoint one or more advocates of not less than ten years standing, as a Special Public Prosecutor as well as Special Government Pleader for the purpose of conducting the case in the Designated Court.

Special Fublic Prosecutor.

17. (1) The Designated Court may take cognizance of the offence without the accused being committed to it for trial and, in trying the accused person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 for the trial of warrant cases by Magistrates.

Procedure and powers of Designated Court regarding offences.

2 of 1974.

2 of 1974.

(2) The provisions of the Code of Criminal Procedure, 1973 except section 438 thereof shall, so far as may be, apply to the proceedings before a Designated Court and for the purposes of the said provisions a Designated Court shall be deemed to be a Magistrate.

Act to override other laws.

18. Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith, contained in any other law for the time being in force or any custom or usage.

Protection of action taken in good faith.

19. No suit, prosecution or other legal proceedings shall lie against the State Government or the Competent Authority or an officer or employee of the State Government for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act, or rules made thereunder.

Power to make rules.

- 20. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.
- (3) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

Power to remove difficulty.

21. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, do anything, not inconsistent with the provisions of this Act, as appears it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS

There has been, in recent years, a mushroom growth of financial establishments in the State. Many such establishments secure deposits from the public, mostly middle class and poor, by promising highly attractive interest rates or rewards but without making due provision for refunding the deposits to the depositors on maturity or without any enforcing provision for rendering services in kind in return, as promised. Many financial establishments have defaulted in returning the deposits on maturity or in paying interest or in rendering the services in kind in return, as assured to the public. As such it has resulted in great public resentment and uproar, creating law and order problem in the State. It is, therefore, considered necessary to make a suitable special legislation to protect the interest of depositors and to curb the unscrupulous activities of such financial establishments in the State of Gujarat.

This Bill seeks to achieve the aforesaid object.

The following notes on clauses explain the important provisions of the Bill:-

- Clause 1.- This clause provides for short title and commencement of the Act.
- Clause 2.- This clause defines certain terms used in the Bill.
- Clause 3.- This clause provides for the punishment to the extent of six years and with fine upto ten lacs of rupees to the promoter, partner, director, manager or any other person or an employee of the Financial Establishment for fraudulently default in any repayment of deposits on maturity along with other benefits.
- Clause 4.- This clause empowers the State Government to make an order in the Official Gazette, to protect the interest of the depositors of such Financial Establishments which are in default in the payment of the deposit on Financial Establishments and also provides that all moneys, properties and assets of the Financial Establishments shall vest in the Competent Authority, on publication of the order under sub-clause (1) of this clause.
- Clause 5.- This clause provides for the appointment of the Competent Authority by the State Government and for powers to be exercised by it, the procedure to be adopted by the Competent Authority after issuance of the order made under section 4 and also provides that the Competent Authority may also apply to the Special Court or

Designated Court or other judicial forum for the adjudication of any issue or subject matter pertaining to moneys, properties or assets, for passing appropriate orders to give effect to the provisions of the Act.

- Clause 6.- This clause provides for the duties and powers of the Competent Authority, for taking possession of all the moneys, properties and assets of the Financial Establishments.
- Clause 7.- This clause provides for the procedure to be adopted by the Competent Authority for the assessment of assets and deposit, liabilities and preparation of a statement of dues of Financial Establishment which is due from various debtors, list of depositors and their respective dues.
- Clause 8.- This clause provides that the Competent Authority shall make an application to the Designated Court seeking permission to make payment to the depositors out of the moneys realised, disbursement of the moneys as per the orders of Designated Court.
- Clause 9.- This clause empowers the State Government to constitute Designated Court of the level of the Court of District and Sessions Judge. It also provides for the jurisdiction of the Designated Court so constituted and transfer of cases pending before any Court to the Designated Court.
- Clause 10.- This clause provides for the powers of the Designated Court regarding issue of notices to the Financial Establishment or the persons whose moneys or properties or assets is attached by the State Government and the procedure to be followed for attachment of the property by the Designated Court.
- Clause 11.- This clause provides for the powers of the Designated Court to give directions as it deem fit to the Competent Authority for effective implementation of the provisions of the Act and pass appropriate orders for realisation of property, assets of the Financial Establishments and the payment to the depositors of such Financial Establishment and for matters incidental thereto.
- Clause 12.- This clause empowers the Designated Court for the attachment of those property which have been transferred not in good faith and not for adequate consideration by the Financial Establishment.
- Clause 13.- This clause provides that Financial Establishment may apply to the Designated Court and ask for the permission for giving security in lieu of attachment of moneys, properties or assets.

- Clause 14.- This clause empowers the Designated Court to pass orders for the proper administration of the moneys, properties and assets attached and vested in the Competent Authority, as may be reasonably necessary for the maintenance of applicant and his family and for safeguarding the interest of any business affected by such attachment.
- Clause 15.- This clause contains provisions for appeal.
- Clause 16.- This clause provides for the appointment of Special Public Prosecutor by the State Government for the purpose of conducting the cases in the Designated Court.
- Clause 17.- This clause provides for the procedure to be adopted by the Designated Court for the trial of offences.
- Clause 18.- This clause provides that the provisions of the Act shall prevail over the provisions of other laws.
- Clause 19.- This clause provides for usual indemnity for Acts done in good faith.
- Clause 20.- This clause empowers the State Government to make rules for carrying out the purposes of the Act.
- Clause 21.- This clause empowers the State Government to remove difficulty that may arise within a period of three years from the date of commencement of the Act.

AMIT SHAH

49.16

FINANCIAL MEMORANDUM

Clause 5 of the Bill seeks to empower the State Government to appoint an officer not below the rank of the Deputy Collector to be the Competent Authority to exercise control over the moneys, properties and assets attached by the State Government. The Deputy Collector of the District would be designated to be the Competent Authority as and when required for the purpose of this Act. As such there may not be any additional expenditure for this purpose.

Clause 9 seeks to empower the State Government to constitute one or more Designated Court for the purposes of this Act. The existing Court of District and Sessions Judge or the Additional Sessions Judge of the District would be notified as a Designated Court in consultation with the Chief Justice of the High Court of Gujarat for the purpose of this Act. Therefore, no additional expenditure would involve on this account.

Clause 16 seeks to empower the State Government to appoint Special Public Prosecutor or a Special Government Pleader for the purpose of conducting the case in the Designated Court. The Government Pleader and the Public Prosecutor of the district would be entrusted the work to conduct the cases under the Act before the Designated Court. Therefore, there would not be any additional expenditure in this regard.

Therefore, the provisions of the Bill, if enacted and brought into force, would not involve any additional expenditure from the Consolidated Fund of the State.

AMIT SHAH

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves delegation of legislative powers in the following respects:-

- Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date of which the Act shall come into force.
- Clause 2.- Para (d) of sub-clause (iv) of this clause empowers the State Government to specify by order, any other institution to be the Financial Establishment.
- Clause 5.- Sub-clause (1) of this clause empowers the State Government to appoint the Competent Authority.
- Clause 9.- Sub-clause (1) of this clause empowers the State Government, with the concurrence of the Chief Justice of the High Court of Gujarat, by notification in the Official Gazette, to constitute one or more Designated Court of the level of District and Sessions Judge for such area or areas as may be specified in the notification.
- Clause 20.- Sub-clause (1) of this clause empowers the State Government to make rules, by notification in the Official Gazette, for carrying out the purposes of the Act.
- Clause 21.- This clause empowers the State Government to make an order for removing the difficulty arising in giving effect to the provisions of the Act.

The delegation of legislative powers as aforesaid is necessary and is of a normal character.

Dated the 2nd September, 2003.

AMIT SHAH.

By order and in the name of the Governor of Gujarat,

Gandhinagar, Dated the 2nd September, 2003. V. M. KOTHARE,

Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

(To be translated into Gujarati and the translation to be published in the Gujarat Government Gazette. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to the rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT SALES TAX (AMENDMENT) BILL, 2003

GUJARAT BILL NO. 50 OF 2003.

A BILL

further to amend the Gujarat Sales Tax Act, 1969.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

(1) This Act may be called the Gujarat Sales Tax (Amendment) Act, 1. 2003.

Short title and commencement.

- It shall come into force on such date as the State Government may **(2)** by notification in the Official Gazette, appoint.
- In the Gujarat Sales Tax Act, 1969, in Schedule II, in Part A, in the Amendment of entry at serial No. 33, in columns 3 and 4, for the words "Eight paise in the Guj. 1 of rupee", the words "Twenty-five paise in the rupee" shall be substituted.

Part A of Guj.1 of 1970.

1970.

STATEMENT OF OBJECTS AND REASONS

Under the existing provision of entry at serial number 33 in Part A of Schedule II of the Gujarat Sales Tax Act, 1969, sales of Kerosene excluding Kerosene for domestic use sold for public distribution system are liable to sales tax at the rate of eight per cent. With a view to curbing adulteration of kerosene in various other fuels such as diesel, it is considered necessary to increase the rate of sales tax from eight per cent. to twenty-five per cent.

This Bill seeks to amend the said Act to achieve the aforesaid object.

VAJUBHAI VALA

MEMORANDUM REGARDING DELEGATED LEGISLATION.

This Bill involves delegation of legislative power in the following respect:-

Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the Official Gazette, the date on which the Act shall come into force.

The delegation of legislative power as aforesaid is necessary and is of a normal character.

Dated the 3rd September, 2003.

VAJUBHAI VALA.

By order and in the name of the Governor of Gujarat,

V.M. KOTHARE,

Secretary to the Government of Gujarat, Legislative and Parliamentary Affairs Department.

Gandhinagar,
Dated the 3rd September, 2003.



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PART-V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 11th September, 2003 by Smt.Anandiben Patel, Minister for Education is published under rule 127-A of the Gujarat Legislative Assembly Rules for general information.

THE GUJARAT UNIVERSITIES LAWS (SECOND AMENDMENT) BILL, 2003.

GUJARAT BILL NO. 51 OF 2003.

A BILL

further to amend the South Gujarat University Act, 1965 and the Kachchh University Act, 2003.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Universities Laws (Second Amendment) Act, 2003.

Short title and commencement.

(2) It shall come into force at once.

Amendment of long title.

2. In the South Gujarat University Act, 1965 (hereinafter referred to as "the principal Act"), in the long title, for the words "the South Gujarat University", the words "the Vir Narmad South Gujarat University" shall be substituted.

Guj. 38 of 1965.

Amendment of section 1 of Guj. 38 of 1965.

3. In the principal Act, in section 1, in sub-section (1), for the words and figures "the South Gujarat University Act, 1965", the words and figures "the Vir Narmad South Gujarat University Act, 1965" shall be substituted.

Amendment of section 2 of Guj. 38 of 1965.

4. In the principal Act, in section 2, in clause (15), for the words "the South Gujarat University", the words "the Vir Narmad South Gujarat University" shall be substituted.

Amendment of section 3 of Guj. 38 of 1965.

5. In the principal Act, in section 3, in sub-section (1), for the words "The South Gujarat University", the words "The Vir Narmad South Gujarat University" shall be substituted.

Insertion of new section 60A in Guj. 38 of 1965. 6. In the principal Act, after section 60, the following new section shall be inserted, namely:-

Construction of references to South Gujarat University Act, 1965 and South Gujarat University in existing laws, instruments, etc.

"60A. (1) As from the commencement of the Gujarat Universities Laws (Second Amendment) Act, 2003 (hereinafter referred to as "the said Act"), any reference in any existing law or instrument or document —

Guj. 2003.

- (a) to the expression "the South Gujarat University Act, 1965" shall be construed as if it were a reference to "the Vir Narmad South Gujarat University Act, 1965", and
- (b) to the expression "the South Gujarat University" shall be construed as if it were a reference to "the Vir Narmad South Gujarat University".
- (2) Any act done by, or any suit or other proceeding filed by or against the South Gujarat University before the commencement of the said Act shall be deemed to have been done or, as the case may be, filed by or against the Vir Narmad South Gujarat University.

Explanation.- For the purpose of this section "existing law" means any enactment of a Legislature of any other competent authority in relation to matters specified in Lists II and III in the Seventh Schedule to the Constitution of India as in force in any part of the State of Gujarat immediately before the commencement of the said Act and includes any statute, ordinance, rule, bye-law, regulation, order, notification, scheme,

form or other instrument having the force of law made, prescribed or issued under any such enactment.".

Guj. 5 of 2003.

In the Kachchh University Act, 2003, in the long title, for the Amendment of words "the Kachchh University", the words "the Krantiguru Shyamji Krishna Verma Kachchh University" shall be substituted.

long title.

Gui. 5 of 2003.

In the Kachchh University Act, 2003, in section 1, in sub-section (1), for the words and figures "the Kachchh University Act, 2003", the words and figures "the Krantiguru Shyamji Krishna Verma Kachchh University Act, 2003" shall be substituted.

Amendment of section 1 of Guj. 5 of 2003.

Guj. 5 of 2003.

In the Kachchh University Act, 2003, in section 2, in clause (17), for the words "the Kachchh University", the words "the Krantiguru Shyamji Krishna Verma Kachchh University" shall be substituted.

Amendment of section 2 of Guj. 5 of 2003.

Guj. 5 of 2003.

In the Kachchh University Act, 2003, in section 3, in sub-section (1), for the words "Kachchh University", the words "the Krantiguru Shyamji Krishna Verma Kachchh University" shall be substituted.

Amendment of section 3 of Guj. 5 of 2003.

Guj. 5 of 2003.

In the Kachchh University Act, 2003, after section 80, the 11. following new section shall be inserted, namely :-

Insertion of new section 80A in Guj. 5 of 2003.

Construction of references to Kachchh University Act, 2003 and Kachchh University in existing laws, instruments. etc.

"80A. (1) As from the commencement of the Gujarat Universities Laws (Second Amendment) Act, 2003 (hereinafter referred to as "the said Act"), any reference in any existing law or instrument or document -

Guj. of 2003.

- to the expression "the Kachchh University Act, (a) 2003" shall be construed as if it were a reference to "the Krantiguru Shyamji Krishna Verma Kachchh University Act, 2003", and
- to the expression "the Kachchh University" shall (b) be construed as if it were a reference to "the Krantiguru Shyamji Krishna Verma Kachchh University".
- Any act done by, or any suit or other proceeding filed by or against the Kachchh University before the commencement of the said Act shall be deemed to have been done or, as the case may be, filed by or against the Krantiguru Shyamji Krishna Verma Kachchh University.

Explanation. For the purpose of this section "existing law" means any enactment of a Legislature of any other competent authority in relation to matters specified in Lists II and III in the Seventh Schedule to the Constitution of India as in force in any part of the State of Gujarat immediately before the commencement of the said Act and includes any statute, ordinance, rule, bye-law, regulation, order, notification, scheme, form or other instrument having the force of law made, prescribed or issued under any such enactment."

STATEMENT OF OBJECTS AND REASONS

To pay tribute for the tremendous religious, literary and academic contribution of Vir Narmad, the Executive Council of the South Gujarat University has considered it worthwhile to re-name "the South Gujarat University" as "the Vir Narmad South Gujarat University". A resolution has been passed by the Executive Council to that effect. Accordingly, it is considered necessary to amend the long title, short title and other sections of the South Gujarat University Act, 1965.

Looking to the priceless contribution and luminous works in the field of freedom movement of India and education by Krantiguru Shyamii Krishna Verma, he is considered as a torch-bearer and pioneer of freedom movement of India.

To pay tribute for the leading freedom fighter and revolutionary of Gujarat, it is considered worthwhile to rename the Kachchh University as "the Krantiguru Shyamji Krishna Verma Kachchh University". Accordingly, it is proposed to amend the long title, short title and other sections of the Kachchh University Act, 2003.

This Bill seeks to amend the said Acts to achieve the aforesaid object.

Dated the 10th September, 2003.

ANANDIBEN PATEL.

Gandhinagar, Dated the 11th September, 2003.

D. M. PATEL, Secretary, Gujarat Legislative Assembly.

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PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 11th September, 2003 by Shri Mahendra Mashroo M.L.A. is published under rule 127-A of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL, NO. 52 OF 2003.

THE GUJARAT PRESERVAION AND CONTROL OF POPULATION OF PIGS BILL, 2003.

A BILL

to preserve and to control the population of pigs in the State of Gujarat and for matters connected therewith.

It is hereby enacted in the Fifty fourth year of the Republic of India as follows:—

- 1. (1) This Act may be called the Gujarat Preservation and control of population of Pigs Act, 2003.
 - (2) It extends to the whole of the State of Gujarat.
 - (3) It shall come into force at once.

Bom. LIX of 1949 Guj. XXXIV of 1963 Guj. XVIII of 1993. 2. The words "local Authority" used but not defined in this Act, shall have the meaning assigned to them in the Bombay Provincial Municipal Corporations Act, 1949, or the Gujarat Municipalities Act, 1963 or the Gujarat Panchayats Act, 1993 as the case may be.

commencement.

Short title extent and

Definitions of "local authority". System of capturing the pigs

- 3. (1) The present system of capturing the pigs by contract method by the local authorities shall be abolished at once.
 - (2) The pigs shall be captured only by the local authority personnel.

Preservation shelter and food to pigs.

- 4. (1) The local authority shall preserve properly the captured pigs and shall arrange to preserve them in shelter houses.
 - (2) It shall be the duty of the local authority to establish and maintain well prepared shelter houses having proper food and water facilities for pigs captured by it.

Control of Population of pigs.

- 5. (1) It shall be the duty of local authority to make all reasonable efforts to control the population of pigs.
 - (2) For the purpose referred to in sub-section (1) every pig shall be undertaken for the sterilisation operation in due course by the local authority.

Power to make rules.

- 6. (1) The State Government may, by notification in the Official Gazette, make rules for carying out the purposes of this Act.
 - (2) The power to make rules under this Act, shall be subject to the condition of previous publication.
 - (3) All rules made under this Act by the State Government shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modification as the Legislature may make during the session in which they are so laid, or the session immediately following.

STATEMENT OF OBJECTS AND REASONS

The present system of capturing the pigs by the contractor is cruel and painful for the pigs, therefore, it needs to be changed. It is suggested that this work should be assigned to the own staff of the local authority, who will carefully and painlessly capture the pigs.

It is welknown fact that the captured pigs are ultimately sent to slaughter houses and their meat is served in particular hotels. To remove this, it is suggested that the pigs shall be preserved carefully and shall be kept in shelter houses made for them.

It is necessary to control the population of pigs. Therefore it is suggested that the pigs shall be undertaken for the sterilisation operations.

Hence this Bill.

Gandhingar.
Dated the 5th March, 2003

MAEENDRA MASHROO M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill, empowers the State Government to make rules for carrying out the purposes of the Act.

The delegation of legislative powers as aforesaid is necessary and is of normal character.

Gandhinagar. Dated the 5th March, 2003.

MAHENDRA MASHROO M.L.A.

FINANCIAL MEMORANDUM

This Bill, if enacted and brought into operation would incur expenditure for additional staff for capturing pigs, preservation of pigs, establishment and maintainance of shelter houses for pigs and for undertaking the sterilisation operations of pigs.

It is presumed and expected that the local authority shall itself make necessary arrangement for the required fund from its own sources and therefore, no extra expenditure will be incurred from the Consolidated Fund of the State of Gujarat.

Gandhinagar.
Dated the 5th March, 2003.

MAHENDRA MASHROO M.L.A.

Gandhinagar, Dated the 11th September, 2003.

D. M. PATEL,
Secretary,
Gujarat Legislative Assembly.

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PART. V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 11th September, 2003 by Shri Dhanasukhbhai Patel M.L.A.is published under rule127-A of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 53 OF 2003.

THE GUJARAT CO-OPERATIVE SOCIETIES (AMENDMENT) BILL, 2003.

A BILL

further to amend the Gujarat Co-operative Societies Act, 1961.

It is hereby enacted in the Fifty-fourth year of the Republic of India as follows:—

- 1. (1) This Act may be called the Gujarat Co-operative Societies (Amendment) Act, 2003.
 - (2) It shall come into force at once.

Short title and commencement

Amendment

of Section 74(B).

Guj. X of 1962.

- 2. In the Gujarat Co-operative Societies Act, 1961,
 - (1) In section 74(B), in sub section (i), for the words "two seats", the words "three seats" shall be substituted.
 - (2) after Clause (b) the following New Clause, shall be inserted namely:—
 "(c) one for the woman."

V- Ex.-53-1

GUJARAT GOVERNMENT GAZETTE EX., 11-9-2003 STATEMENT OF OBJECTS AND REASONS

In pursuance of General policy of the State Government to give representation to woman in the management of Co-operative Societies, it is proposed to give representation to a woman in the committee of Co-operative Societies constituted under Section 74 of the Gujarat Co-operative Societies Act, 1961.

The Bill seeks to amend Section 74(B) of the Gujarat Co-operative Societies Act, 1961 to achieve the aforesaid object

Gandhinagar.

Dated the 6th March, 2003

DHANASUKHBHAI PATEL,

M. L. A.

Gandhinagar, Dated the 11th September, 2003.

D. M. PATEL, Secretary. . Gujarat Legislative Assembly.





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PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 11th September, 2003 by Shri Dhanasukhbhai Patel (Dhirubhai Gajera) M.L.A. is published under rule 127-A of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 54 OF 2003.

THE BOMBAY RENTS, HOTEL AND LODGING HOUSE RATES CONTROL (GUJARAT AMENDMENT) BILL, 2003.

A BILL

further to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 in its application to the State of Gujarat.

It is hereby enacted in the Fifty-fourth year of the Republic of India as follows:—

1. (1) This Act may be called the Bombay Rents, Hotel and Lodging House Rates Control (Gujarat Amendment) Act, 2003.

Short title and commencement.

Bom. LVII

of 1947.

ي يوني

(2) It shall come in to force at once.

Insertion of new section in Bom. LVII of 1947. 2. (1) In the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, after Section 13AA, insert the following new section namely-

Special
right of the
owner, his
widow or
heirs to
recover
possession
required for
their
occupation.

"13AAA (1) Notwithstanding anything to the contary in this Act or in any contract, a specified landlord shall be entitled to recover from his tenant the possession of any Premises owned by him or any member of his family, on the ground that-

- (a) such premises are bonafied and immediately required by him for occupation by himself or his family member either in the case of marriage or separation from the joint family or for separate living by him or any member of his family for any other reason.
- (b) He does not possess any other premises suitable for residence in the local area where the premises are situated.
- 2. on receipt of an application made by the owner under sub-section (1), the competent authority shall, after giving a three months notice to the tenant for eviction of the premises, make an order of eviction.

STATEMENT OF OBJECTS AND REASONS

Under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the tenant has been given right to occupy the premise of a landlord so long he desires to occupy it. The landlords in ordinary cases build a premise for his own use or for the use of his spouse, son or daughter in future or after a lapse of some time it becomes convenient to him his spouse or son or daughter. It always happens that tenant when in need approaches the landlord for the use or occupation of the premise for sometime with a promise to evict or vacate the premise whenever the landlord needs or wishes. But in most of the cases the tenants do not keep their promise and taking the shelter under the provisions of the aforesaid Act, occupies the premise with a mala-fide intention of not vacating the premise in future under any circumstances. Most probably it happens that the tenant, when vacating the premise demands for a paghadi (an exorbitant amount for vacating the premises) and the landlord is put to an unbearable hardship. Medium class people or a common man builds a premise with a view to use his premises whenever the need arises and with an intention to pass his life in his own premise. He lets his premise to the tenant in the aforesaid circumstances with a clear understanding to vacate when he requires it in future. But he cannot recover the possession of his own premise when he requires it or when the premise is required for the use of his spouse, son or daughter or for personal use for the reasons either of marriage or separation from joint farmily or for any other reason. This Bill, therefore, seeks to provide for the protection to the landlord especially the medium class people at the time of their requirement in the aforesaid circumstances to recover the possession from the tenant and live peacefully in his own premise.

Hence this bill.

DHANASUKHBHAI PATEL

Dated the 6th March, 2003. Gandhinagar.

(DHIRUBHAI GUJERA) M.L.A.

Gandhinagar,
Dated the 11th September, 2003.

D. M. PATEL,
Secretary,
Gujarat Legislative Assembly.





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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART- V

Bills introduced in the Gujarat Legislative Assembly.

The following Bill which was introduced on the 11th September, 2003 by Shri Dhanrajbhai Kela M.L.A. is published under rule 127-A of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 55 OF 2003.

THE GUJARAT FAMILY WELFARE BILL, 2003.

A BILL

to control the population growth and provide measures to restrict the size of the family so as to provide opportunities for individual development and to attain family welfare in the State of Gujarat and for matters connected therewith.

It is hereby enacted in the Fifty fourth Year of the Republic of India as follows:-

- 1. (1) This Act may be called the Gujarat Family Welfare Act, 2003.
 - (2) It extends to the whole of the State of Gujarat.
 - (3) It shall come into force on such date as the State Government may, by notification, in the Official Gazette, appoint.
- 2. In this Act, unless the context otherwise requires,-

Short title, extent and commencement.

Definitions.

Functions of Director of Health & Medical Services.

- 5. (1) The Director of Health and Medical Services shall take all necessary measures to create awareness of the provisions of this Act.
- (2) The Director of Health and Medical Services of the State of Gujarat shall supervise the implementation of this Act and shall prepares statement of breach of the provisions of this Act and shall cause it to be laid on the table of the Gujarat Legislative Assembly.

Power to make rules.

- 6. (1) the State government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.
- (2) Rules made under this section shall be laid before the State Legislature as soon as possible after they are made and shall be subject to such modifications or recession as the State Legislature may make in the session in which they are so laid.
- (3) Any modification or rescission so made by the State legislature shall be published in the *Official Gazette* and shall thereupon take effect.

Gandhinagar, Date: 24th March, 2003. Dhanrajbhai Kela, M.L.A.

STATEMENT OF OBJECTS AND REASONS.

After independence, large scale socio-economic development activities have been under taken by the state. Simultaneously, unchecked birth rate has adverse implications on our socio-economic development, which has resulted in a very poor share of development to the individual. According to 2001 census, the population of India is above 100 Crores.

Stabilization of the population at the replacement level is the over-riding national priority.

In the world, countries like China, have taken drastic steps to control the birth rate. in India some states have already passed similar legislations and recently, the supreme court of India has up held the legislation passed by Hariyana State which Interalia deny the membership of Grampanchayats. The main purpose of the Bill is to create awareness in the minds of the people to restrict the size of their family. If this is not done, the scope for the new development is very meager. For family welfare and individual development, this Bill is proposed.

Gandhinagar, Date: 24th March, 2003. Dhanrajbhai Kela, M.L.A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause (1) empowers the State Government to specify the date on which the Act shall come into force.

Sub-Clause (1) of clause (6) empowers the State Government to make rules for carrying out the purposes of this Act.

The delegation of Legislative powers as aforesaid is essential and of normal character.

Gandhinagar, Date: 24th March, 2003. Dhanrajbhai Kela, M.L.A.

Gandhinagar, Dated the 11th September, 2003. D. M. PATEL,
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- 2. In this Act, unless the context otherwise requires,-

Short title, extent and commencement

Definitions.

- (a) "Public Servant" means,--
- (i) any person in the service or pay of the State Government remunerated by fees or commission for the performance of any duty for the State Government.
- (ii) any person in the service or pay of a local authority or a Corporation established under the State or Central Act or a body owned or controlled or aided by the State Government or a government Company established by the State Government under Section 617 of the Companies Act, 1956.

1 of 1956

(b) "Local Body" means a body constituted under the Bombay Provincial Municipal Corporations Act, 1949 or the Gujarat Municipalities Act, 1963 or the Gujarat Panchayats Act, 1993 or any other Act under which a body is created or constituted in the State of Gujarat;

Bom. 59 of 1949 Guj. 34 of 1964. Guj. 18 of 1993.

(c) "University" means any University established by law in the state of Gujarat and includes any other institution recognised by the University Grants Commission.

10 of 1965

(d) "Public Distribution System" means a system under which essential commodities such as, food grain, sugar, kerosin, cooking oils, etc are provided through fair price shop on family card or regulated under the Essential Commodities Act, 1955 or any other Act or rules framed by the State Government;

Bom. 61 of 1947.

(e) "Educational Institution" means an institution imparting primary or Secondary or higher education, recognised or registered under the Bombay Primary Education Act, 1947 or the Gujarat Secondary Education Act, 1973, or under any University established by law in the State of Gujarat or other Authority constituted under the state or Central Act;

Guj. 18 of 1973.

(f) "Specified Date" means a date specified for bringing into effect the provisions of this Act which shall be the date one year later than the date fixed under sub-section (3) of section 1.

3. A person shall be disqualified for the purposes enumerated in section 4 of this act if he has more than two children.

Disqualification on Violation of small family norm.

provided that nothing in this Section shall apply to any person-

- (a) having more than two children on the date of commencement of this Act or as the case may be, within a period of one year of such commencement, unless he be gets an additional child after the said period of one year;
- (b) having one child on the date of commencement of this Act or as the case may be, within a period of one year of such commencement, if a subsequent child birth results in the birth of more than one child.

Explanation.- For the purposes of this Section, a person shall not cease to incur disqualification merely by reason of his giving his child in adoption.

- 4. A person disqualified under section 3 of this Act shall-
- persons not entitled to certain

benefits/ facilities -

Disqualified

- (1) not be entitled to a membership of a local body;
- (2) if he is a public servant, he shall not be entitled to get.
 - (a) an yearly increment or due promotion;
- (b) facilities such as advances for purchase of residential accommodation, vehicles and food-grains;
- (c) medical facility in any hospital run by the State Government or by a local body or by any other authority receiving grant of the State Government.
- (d) any essential commodity from the fair price shop or avail any facility under the public Distribution System.
 - (e) a new gas connection.

Functions of Director of Health & Medical Services.

- 5. (1) The Director of Health and Medical Services shall take all necessary measures to create awareness of the provisions of this Act.
- (2) The Director of Health and Medical Services of the State of Gujarat shall supervise the implementation of this Act and shall prepares statement of breach of the provisions of this Act and shall cause it to be laid on the table of the Gujarat Legislative Assembly.

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- (2) Rules made under this section shall be laid before the State Legislature as soon as possible after they are made and shall be subject to such modifications or recession as the State Legislature may make in the session in which they are so laid.
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